87

Supreme Court, U.S.
FILED

(1) 071162 MAR 7 - 2008

No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

JOSEPH P. GANIM, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ERIC W. BLOOM
COUNSEL OF RECORD
KAREN SUGDEN MANLEY
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, D.C. 20006
(202) 282-5000

Counsel for Petitioner
Joseph P. Ganim

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTIONS PRESENTED

1. Whether the Second Circuit erred in interpreting — in conflict with this Court's precedent and the precedent of other circuits — the quid pro quo elements of various federal bribery statutes as requiring only an agreement to perform "particular kinds of influence" as "opportunities arose," rather than requiring a promise to perform one or more *specific* official acts.

2. Whether the Second Circuit erred in finding the district court's 18 U.S.C. § 666 jury instruction "harmless error," when considered in light of the taint associated with the district court's jury instruction error raised in Question 1.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES vi

INTRODUCTION 1

OPINIONS BELOW 2

JURISDICTION 2

RELEVANT STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE PETITION 8

I. This Case Presents A Conflict With The Other Circuits. 8

II. This Case Presents A Conflict With This Court's Precedent 13

III. This Case Presents An Important Issue Of The Standard Necessary To Establish The Crime Of Bribery, Implicating Numerous Federal Statutes. 18

IV. The Jury Instructions Permitted The Jury To Convict On A Lesser Included Offense, Which The Government Did Not Prosecute. 20

CONCLUSION 23

APPENDIX A

United States v. *Ganim*, 510 F.3d 134 (2d Cir. 2007) 1a

APPENDIX B
United States v. *Ganim*, 2007 WL 4233388 (2d Cir. Dec. 4, 2007) (Summary Order) 38a

APPENDIX C
United States v. *Ganim*, 2002 WL 31643045 (D. Conn. Nov. 20, 2002) (Order on Motion for Filing of Supplemental Bill of Particulars) 46a

APPENDIX D
United States v. *Ganim*, 225 F. Supp. 2d 145 (D. Conn. 2002) (Ruling on Motion to Dismiss Indictment) 49a

APPENDIX E
United States v. *Ganim*, 2008 WL ---------- (2d Cir. Mar. 4, 2008) (Order Denying Rehearing En Banc) 88a

APPENDIX F
United States v. *Ganim*, Amendment to Judgment (entered July 14, 2003) 90a

APPENDIX G
United States v. *Ganim*, Preliminary Order of Forfeiture (entered July 11, 2003) 91a

APPENDIX H
United States v. *Ganim*,
Amendment to Judgment
(entered July 7, 2003) 93a

APPENDIX I
United States v. *Ganim*,
Judgment
(entered July 3, 2003) 94a

APPENDIX J
United States v. *Ganim*,
Supplemental Bill of Particulars
(filed Dec. 4, 2002) 101a

APPENDIX K
United States v. *Ganim*,
Bill of Particulars
(dated Sept. 27, 2002 and filed
Sept. 30, 2002) 117a

APPENDIX L
Relevant Statutory Provisions 129a

18 U.S.C. § 201(b)&(c) 129a

18 U.S.C. § 666(a)(1)(B) 134a

18 U.S.C. § 1341 ..... 136a

18 U.S.C. § 1346 ..... 137a

18 U.S.C. § 1951(b)(2) 138a

18 U.S.C. § 1962 ..... 140a

Conn. Gen. Stat. 53a-148(a) 142a

APPENDIX M

United States v. *Tucker*, Nov. 17, 1995, Hearing Tr., Jury Instructions, at pp. XXXV-129-131, *aff'd*, *United States* v. *Tucker*, 133 F.3d 1208 (9th Cir. 1998)..... 143a

APPENDIX N

United States v. *Jemal*, Oct. 18, 2006, Trial Tr., Jury Instructions, at 04291:13-16, No. CR-05-0359 (D.D.C. 2005)..... 147a

TABLE OF AUTHORITIES

Page(s)

CASES

Desert Place, Inc. v. *Costa*,
539 U.S. 90 (2003) 16

Evans v. *United States*,
504 U.S. 255 (1992) 13-14, 17

Francis v. *Franklin*,
471 U.S. 307 (1985) 21

Kentucky v. *Whorton*,
441 U.S. 786 (1979) 22

McCormick v. *United States*,
500 U.S. 257 (1991) 13-14

Sabri v. *United States*,
541 U.S. 600 (2004) 17

Salinas v. *United States*,
522 U.S. 52 (1997) 17

Taylor v. *Kentucky*,
436 U.S. 478 (1978) 22

United States v. *Alfisi*,
308 F.3d 144 (2d Cir. 2002) 12

United States v. *Bradley*,
173 F.3d 225 (3d Cir. 1999) 9

United States v. *Brewster*,
506 F.2d 62 (D.C. Cir. 1974) 21

United States v. *Coyne*,
4 F.3d 100 (2d Cir. 1993) 12

United States v. *Crozier*,
987 F.2d 893 (2d Cir. 1993) 17

United States v. *Ford*,
435 F.3d 204 (2d Cir. 2006) 13

United States v. *Ganim*,
510 F.3d 134 (2d Cir. 2007) 1-2

United States v. *Ganim*,
2007 WL 4233388 (2d Cir. Dec. 4. 2007) 2

United States v. *Giles*,
246 F.3d 966 (7th Cir. 2001) 10

United States v. *Jennings*,
160 F.3d 1006 (4th Cir. 1998) 9

United States v. *Kemp*,
500 F.3d 257 (3d Cir. 2007),
cert. denied, -- S.Ct. --, 2008 WL 219248
(U.S. Feb. 19, 2008) 9

United States v. *Middlemiss*,
217 F.3d 112 (2d Cir. 2000) 12

United States v. *Quinn*,
359 F.3d 666 (4th Cir. 2004) 9

United States v. *Sun-Diamond Growers*,
526 U.S. 398 (1999) ..... *passim*

United States v. *Sun-Diamond Growers*,
138 F.3d 961 (D.C. Cir. 1998) 21

United States v. *Tucker*,
133 F.3d 1208 (9th Cir. 1998) 10, 11

Valdes v. *United States*,
475 F.3d 1319 (D.C. Cir. 2007) (en banc) 12

STATUTES

18 U.S.C. § 201 ..... 13, 16-17, 20

18 U.S.C. § 201(b) 2, 16

18 U.S.C. § 201(b)(1) 17

18 U.S.C. § 201(c) 2, 16

18 U.S.C. § 201(c)(1)(A) 14-15

18 U.S.C. § 666 ..... *passim*

18 U.S.C. § 666(a)(1)(B) 2, 6, 13, 16

18 U.S.C. § 1341 2

18 U.S.C. § 1346 ..... 2, 6

18 U.S.C. § 1851 5

18 U.S.C. § 1951(b)(2) 2

18 U.S.C. § 1962 2

Conn. Gen. Stat. 53a-148(a) 2

OTHER AUTHORITIES

United States v. *Sun Diamond*,
No. 98-131, 1998 WL 898906
(U.S. Dec. 17, 1998) 15-16

INTRODUCTION

Joseph P. Ganim ("Ganim") respectfully requests that this Court grant his petition for a writ of certiorari to review the decision and judgment of the United States Court of Appeals for the Second Circuit in *United States* v. *Ganim*, 510 F.3d 134 (2d Cir. 2007) (Pet. App. 1a).

This case concerns the meaning of the term quid pro quo, as required for bribery offenses under the RICO, Hobbs Act, mail fraud, and federal program statutes. The Court of Appeals' opinion fails to acknowledge a subtle but critical legal concept applicable to these statutes: To constitute "bribes" (or "extortion under color of official right") rather than allowable perks of lawful lobbying, the benefits conferred on a public official must be given in exchange for a specific official act or acts. The Court of Appeals substantially watered down the quid pro quo standard recognized by this Court and by other federal courts around the country, choosing to affirm an instruction that permitted conviction upon finding that the defendant merely "knows he or she is expected as a result of the payment to exercise *particular kinds of influence or decision making* to the benefit of the payor, and, at the time the payment is accepted, intended to do so *as specific opportunities arose*." (Pet. App. 30a) (emphasis added). The jury instruction in question constituted reversible error, as it eliminated the requirement for the government to prove beyond a reasonable doubt that the public official received one or more benefits with the intent to be influenced with respect to one or more "specific" official acts.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Second Circuit are reported at 510 F.3d 134 (Sotomayor, J., joined by Jacobs, J., and Wesley, J.) (reprinted at Pet. App. 1a-37a) and 2007 WL 4233388 (2d Cir. Dec. 4, 2007) (Jacobs, J., Sotomayer, J., Wesley, J.) (reprinted at Pet. App. 38a-45a). The judgment of the United States District Court for the District of Connecticut is reprinted at Petition Appendix 90a-100a.

JURISDICTION

The United States Court of Appeals for the Second Circuit entered its summary order and its opinion on December 4, 2007. Pet. App. 1a-45a. After being granted an extension of time to file a petition for rehearing en banc, Petitioner filed a timely petition for rehearing en banc on January 17, 2008. That petition was denied on March 4, 2008. Pet. App. 88a. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254 and 28 U.S.C. § 2101.

RELEVANT STATUTORY PROVISIONS

The following statutory provisions, which are reprinted in full at Petition Appendix 129a-142a, are relevant to this petition:

18 U.S.C. § 201(b)
18 U.S.C. § 201(c)
18 U.S.C. § 666(a)(1)(B)
18 U.S.C. § 1341
18 U.S.C. § 1346
18 U.S.C. § 1951(b)(2)
18 U.S.C. § 1962
Conn. Gen. Stat. 53a-148(a)

STATEMENT OF THE CASE

This case arises from the criminal prosecution of Joseph P. Ganim, the former mayor of Bridgeport, Connecticut. After a jury trial, Ganim was convicted of sixteen counts of bribery-related offenses, including racketeering, extortion, honest services mail fraud, federal program bribery, and conspiracy to commit bribery. Ganim was sentenced to 108 months' imprisonment. Pet. App. 3a. On appeal, Ganim argued that the convictions should be reversed because the district court declined to require the government to "link each alleged benefit Ganim received to a specific official act he performed." *Id.* The Second Circuit affirmed the judgment, holding that the government was not required to make such a showing and that the jury was properly charged. Pet. App. 3a-4a.

1. *The District Court Proceedings*: A federal grand jury indicted Ganim on October 31, 2001 for bribery, among other things. Pet. App. 11a-12a. The district court's jurisdiction was invoked pursuant to 18 U.S.C. § 3231. The defense filed a motion for a bill of particulars and a motion to dismiss certain counts and certain "racketeering acts." In the motion, Ganim argued that, *inter alia*, "honest services fraud," as alleged, was unconstitutionally vague, and that the indictment should have identified — but failed to identify — each of the benefits allegedly received by Ganim in exchange for official acts.

On September 12, 2002, the district court denied the motion to dismiss (Pet. App. 50a), but only after expressly confirming that the honest services mail fraud count would be limited to extortion or

bribery[1] and on the further condition that the government provide a bill of particulars identifying the specific benefits alleged for each count or racketeering act. Pet. App. 49a-50a.

Pursuant to the court's order, the government filed a bill of particulars. Pet. App. 117a. However, the bill failed to link any of the "things of value" to any official act. Pet. App. 119a-128a. On November 20, 2002, the district court agreed with the defense that the bill of particulars was insufficient and therefore granted the defense motion for a supplemental bill of particulars. The district court required the government to link each alleged gift to one or more racketeering acts or counts. Pet. App. 47a-48a. In response to the court's order, the government filed a supplemental bill of particulars. Pet. App. 101a. Consistent with the district court's order, however, the supplemental bill of particulars linked alleged benefits to multiple counts or racketeering acts, *not* to specific official acts. *See, e.g.*, Pet. App. 105a.

For example, the government charged that for the ten months from March 1995 through December 1995, Ganim received $1,046 worth of "Meals/entertainment" (or about $26 per week), and that these benefits were related to "Counts 1 (enterprise) and 2." Pet. App. 103a. The government also alleged that for the twelve months from January 1996 through December 1996, Ganim received $2,658 worth of "Meals/entertainment" (or about $51 per week), and that these benefits were related to counts

---

[1] The government made clear that it would prosecute Ganim for bribery-related charges only, not for receipt of unlawful gratuities. Pet. App. 27a-28a, 33a-34a.

1 through 6. Pet. App. 104a. Also in the supplemental bill of particulars, the government alleged that meal and entertainment expenses conferred in 1997 were linked to eight separate counts, but it again failed to allege any nexus between any one benefit and any specific official act, instead lumping a group of benefits (meals) to a group of counts, some of which were wholly unrelated to each other. Pet. App. 105a.

At trial, Ganim testified in his own defense and denied receiving any gifts in exchange for any official acts. Pet. App. 11a. Rather, Ganim testified that any benefits received were given to him out of friendship or in conjunction with legitimate lobbying activity. *Id.*

During trial, the court requested briefing on the question of whether the government must link benefits received to specific official acts. *See, e.g.*, Dist. Ct. Dkt. 135. Rejecting Mr. Ganim's position, the court expressly instructed the jury that no such link was required.[2] On the quid pro quo element of the Hobbs Act extortion under color of official right counts (18 U.S.C. § 1851), the court instructed:

> *The government does not have to prove an explicit promise to perform a particular act* made at the time of payment. It is sufficient if the defendant understood he was expected as a result of the payment to exercise *particular kinds of in-*

---

[2] Other portions of the jury charges set forth below conveyed conflicting instructions, the inclusion of which did not cure the error in the charges set forth herein *See, e.g.*, Pet. App. 20a-21a, 30a-31a.

> *fluence*, that is, on behalf of the payor, *as specific opportunities arose.*

Pet. App. 20a (emphases added). Thus, the government did not have to prove that any of the benefits received were connected to any "specific" act.

On the "honest services" mail fraud counts (18 U.S.C. §§ 1341 and 1346), the court instructed:

> The term "bribe" means a corrupt payment that a public official accepted or agreed to accept with the intent to be influenced in the performance of his or her public duties.
>
> . . .
>
> If the public official knows that he or she is expected as a result of the payment to exercise *particular kinds of influence* or decision making to the benefit of the payor, and, at the time the payment is accepted, intended to do so *as specific opportunities arose*, that is bribery.

Pet. App. 30a (emphases added). Thus, the government again did not have to prove a link between benefits received and any specific official act.

On the federal programs bribery charge (18 U.S.C. § 666(a)(1)(B)) and the bribery charge under Connecticut law (governed by the same standard as § 666, Pet. App. 33a), the court instructed on the meaning of "corrupt intent":

> [T]he government must prove . . . that the defendant acted with the corrupt intent to be influenced or rewarded in

> connection with some business, transaction or series of transactions.
>
> . . .
>
> [A] public official acts corruptly if he solicits, accepts or agrees to accept a personal benefit, at least in part, with the intent to be improperly influenced *or rewarded* in connection with the performance of an official act.

Pet. App. 34a (emphases added). In this instruction, the district court permitted the jury to convict Ganim not only in the event he received a benefit with the intent to be influenced (bribed), but even if he received the benefit only with the intent to be "rewarded" — an intent element inherent in a gratuity charge, even though the government agreed that Ganim was not to be charged with receipt of unlawful gratuities.

On July 1, 2003, Ganim was sentenced to 108 months' imprisonment, the maximum range under the Sentencing Guidelines. The district court ordered Ganim to pay fines and restitution, as well as to forfeit certain funds. Pet. App. 13a; *see also* Pet. App. 91a, 93a, 95a.

2. *The Second Circuit's Decision*: On appeal, Ganim challenged the jury charges on the bribery-related offenses, all of which were based on statutes that criminalize a "quid pro quo agreement — to wit, a government official's receipt of a benefit in exchange for an act he has performed, or promised to perform, in the exercise of his official authority." Pet. App. 14a. Ganim argued that the statutes therefore required the government to prove a "link . . . between

a benefit received and a specifically identified official act." *Id.*

The Second Circuit disagreed that a link to a "specific act" was required and instead held that the government needed to establish only that a government official received a benefit with the expectation that he would, one day, perform a particular "kind" of official act if, and as, "opportunities arose." *Id.*; *see also* Pet. App. 30a. According to the court, requiring that "a specific act be identified and directly linked to a benefit at the time the benefit is received . . . demands too much." Pet. App. 22a. Rather, "so long as the jury finds that an official accepted gifts in exchange for a promise to perform official acts for the giver, it need not find that the specific act to be performed was identified at the time of the promise, nor need it link each specific benefit to a single official act." Pet. App. 25a.

In its Summary Order, the Second Circuit rejected Ganim's contention that the indictment was insufficient. Pet. App. 40a. The Court of Appeals instead determined that the "law does not demand" that the government "link directly each specific benefit . . . received to a specific act of official malfeasance." Pet. App. 41a. Rather, it was sufficient for the government, for "each bribery-related count of the supplemented indictment," to "set forth benefits Ganim received in exchange for his promises to perform official acts." *Id.*

REASONS FOR GRANTING THE PETITION

I. This Case Presents A Conflict With The Other Circuits.

The federal courts of appeals are in conflict over the necessary quid pro quo showing for a bribery

charge. The Second Circuit has noted that the Fourth Circuit shares its view that the government need not link a benefit conferred to a specific official act. Pet. App. 29a. In *United States* v. *Jennings*, 160 F.3d 1006, 1014 (4th Cir. 1998) (discussed at Pet. App. 29a), the Fourth Circuit held that "the government need not show that the defendant intended for his payments to be tied to specific official acts (or omissions)" to prove the quid quo pro essential to bribery. *See also United States* v. *Quinn*, 359 F.3d 666, 673 (4th Cir. 2004) ("Nor must the government prove 'that the defendant intended for his payments to be tied to specific official acts (or omissions) . . . . Rather, it is sufficient to show that the payor intended for each payment to induce the official to adopt a specific course of action.'" (citation omitted)). The *Jennings* court held that "each payment need not be correlated with a specific official act[]. In other words, the intended exchange in bribery can be 'this for these' or 'these for these,' not just 'this for that.'" 160 F.3d at 1014 (citation omitted).

Similarly, in *United States* v. *Bradley*, 173 F.3d 225, 231 (3d Cir. 1999), the Third Circuit upheld a jury instruction on a Hobbs Act extortion claim that stated that "it is sufficient if the public official understands that he is expected, as a result of the payment, to exercise particular kinds of influence or to do certain things connected with his office as specific opportunities arise." *See also United States* v. *Kemp*, 500 F.3d 257, 282 (3d Cir. 2007) ("The key to whether a gift constitutes a bribe is whether the parties intended for the benefit to be made in exchange for some official action; the government need not prove that each gift was provided with the intent to prompt

a specific official act."), *cert. denied*, -- S.Ct. --, 2008 WL 219248 (Feb. 19, 2008).

Other circuits, however, have held that the government must link the benefit conferred to specific official acts.

In *United States* v. *Giles*, 246 F.3d 966, 973 (7th Cir. 2001), the Seventh Circuit upheld a jury instruction providing that a public official has committed extortion if he "conspires to obtain, or attempts to obtain, or obtains money or property, knowing or believing that it is or would be given in exchange for a *specific* requested exercise of his official power." (Emphasis added.) The court stated that the instructions were sufficient because they informed the jury that "the payments must be made with the expectation that a *specific* official act will be taken. And so the concept of *quid pro quo* was adequately presented to the jury." *Id.* (emphasis added).

And even where courts of appeals have seemingly embraced a lesser threshold, the instructions the courts of appeals are affirming could not be any more different than the instructions under which Ganim was convicted. For example, in *United States* v. *Tucker*, the district court charged:

> The Defendant is charged in counts 1 through 10 of the indictment with attempted extortion under color of official right in violation of the Hobbs Act, Section 1951 of Title 18 of the United States Code. In order for the Defendant to be found guilty of those charges, the Government must prove each of the following elements beyond a reasonable doubt . . . . Third, Defendant knew that

> the money was given or *would be given in return for taking some official action with all of you agreeing on a particular official action in exchange for which money was given or would be given* . . . . Mere preparation is not a substantial step toward the commission of the crime of extortion under color of official right. *The offense of extortion under color of official right is completed at the time when the public official receives a payment in return for his agreement to perform specific official acts* . . . . The acceptance by an elected official of a campaign contribution does not in itself constitute a violation of the Hobbs Act, even though the contributor may have business pending before the elected official and even though, shortly before or after the act of support, campaign contributions were solicited and received from the beneficiaries. *However, if a public official accepts money in exchange for a specific requested exercise of official power,* such a demand or acceptance does constitute a violation of the Hobbs Act regardless of whether the payment is made in the form of a campaign contribution."

Pet. App. 144a-145a (Nov. 17, 1995, Hearing Tr., at pp. XXXV-129-131), *aff'd, United States* v. *Tucker*, 133 F.3d 1208, 1215 (9th Cir. 1998) (emphases added).

The U.S. District Court for the District of Columbia recently employed the identical standard in a high-profile criminal prosecution:

> In order to convict, you must be unanimous both as to the thing or things of value given to the public official and the official act or acts that the defendant or defendants corruptly intended to influence.

Pet. App. 147a (*United States* v. *Jemal*, CR-05-0359 (D.D.C.) (Oct. 18, 2006, Trial Tr., at 04291:13-16); *see also Valdes* v. *United States*, 475 F.3d 1319, 1328-30 (D.C. Cir. 2007) (en banc) (reaffirming principle that gratuity conviction requires that the defendant have specific official acts in mind when he receives the alleged benefits); *id.* at 1331 (Kavanaugh, J., concurring) ("Both the bribery and gratuities statutes require the prosecution to show some nexus between a gift and a covered official action.").

Not only does the Second Circuit's decision conflict with the holdings of other circuits and district courts, but the confusion in this arena is reflected by inconsistent decisions even within the Second Circuit. In *United States* v. *Coyne*, 4 F.3d 100, 113-14 (2d Cir. 1993), the Second Circuit upheld a jury instruction stating that a defendant must "know the payment is offered in exchange for a *specific requested exercise of his official power* in order to violate" the Hobbs Act. (Emphasis added); *see also* Pet. App. 19a. Other Second Circuit decisions similarly employed language adopting the principle that benefits conferred had to be linked to specific official acts. *See United States* v. *Middlemiss*, 217 F.3d 112, 122 (2d Cir. 2000) (rejecting defendant's claim of error in a Hobbs Act extortion instruction, finding instruction proper because it properly conveyed that the defendant "had to know a *link* existed between the money paid [him] and his official act" (emphasis added)); *United States* v. *Al-*

fisi, 308 F.3d 144, 149 (2d Cir. 2002) (noting that "bribery involves the giving of value to procure a *specific* official action from a public official") (emphasis added)); *United States* v. *Ford*, 435 F.3d 204, 213 (2d Cir. 2006) (same regarding federal program bribery, 18 U.S.C. § 666(a)(1)(B)).[3]

This Court should grant the petition to resolve the conflicts among the federal courts and to assure that defendants in public corruption cases are treated uniformly regardless of the district or circuit in which the case is tried.

II. This Case Presents A Conflict With This Court's Precedent.

This Court has previously made clear that bribery-related offenses require a nexus to specific official acts. In *United States* v. *Sun-Diamond Growers*, 526 U.S. 398 (1999), this Court addressed the definition of bribery and the role of quid pro quo in that definition, an exploration that had begun in *McCormick* v. *United States*, 500 U.S. 257 (1991), and *Evans* v. *United States*, 504 U.S. 255, 258 (1992).

In *McCormick*, this Court rejected the court of appeals' position that, in a case involving Hobbs Act extortion, "payments to elected officials could violate the Hobbs Act without proof of an explicit *quid pro quo*." 500 U.S. at 271. Rather, this Court held that an extortion claim based on an act performed "under color of official right" required the government to show that the payments were made "in return for an

---

[3] Significantly, in *Ford*, the Second Circuit acknowledged that § 666 was modeled on the federal bribery statute, 18 U.S.C. § 201. *Ford*, 435 F.3d at 210. Thus, *pari materia* construction is necessary for the two statutes.

explicit promise or undertaking by the official *to perform or not to perform an* official act." *Id.* at 273 (emphasis added). The Court explained that in "such situations the official asserts that his official conduct will be *controlled by the terms of the promise or undertaking*." *Id.* (emphasis added). However, the Court's holding was limited to the campaign contribution context. *Id.* at 274 n. 10; *see also* Pet. App. 16a.

In *Evans*, this Court again addressed a Hobbs Act extortion claim[4] and further explained its holding in *McCormick* when it held that a jury instruction "satisfie[d] the *quid pro quo* requirement of *McCormick* . . . because the offense is completed at the time when the public official receives a payment in return for his agreement to perform *specific* official acts." 504 U.S. at 268 (emphasis added).[5] The Court acknowledged that "passive acceptance of a benefit by a public official is sufficient to form the basis of a Hobbs Act violation if the official knows that he is being offered the payment in exchange for a *specific* requested exercise of his official power." *Id.* at 258 (emphasis added). Thus, in *Evans*, the Court held that the extortion claim required the showing that a benefit was received in exchange for a *specific* act.

In *Sun-Diamond*, this Court addressed the level of specificity required under 18 U.S.C. § 201(c)(1)(A), the federal bribery statute prohibiting illegal gratuities. 526 U.S. 398. In *Sun-Diamond*, the jury in-

---

[4] The Court explained in *Evans* that extortion under color of official right was essentially "equivalent" to bribery. 504 U.S. at 260; *see also id.* at 267 n. 18.

[5] The *Evans* holding was not limited to the campaign contributions. *See* Pet. App. 17a.

struction and indictment were similar to those at issue here. The indictment merely "alluded to" matters before the official without alleging a connection between any specific act and the alleged thing of value conferred. *Id.* at 401-02. The jury instruction stated that the "government *need not prove* that the alleged gratuity was linked *to a specific or identifiable official act or any act at all.*" *Id.* at 403 (emphasis added).

This Court explained that the government must "identif[y]" and "prove[]," that the alleged gift was "for or because of" "some *particular official act.*" *Id.* at 406 (emphasis added). Thus, this Court made clear that the "Government must prove a link between a thing of value conferred upon a public official and a *specific* 'official act' for or because of which it was given." *Id.* at 414 (emphasis added); *see also id.* at 406 ("The insistence upon an 'official act' . . . seems pregnant with the requirement that some particular official act be identified and proved."). As this Court explained (and the Second Circuit acknowledged), without such specificity an official position (rather than an official act) would be sufficient, blurring the line between an illegal gift (given for a specific act) and legal gifts (given merely because of an official position). *Id.* at 406-09; *see also* Pet. App. 25a.[6]

---

[6] While *Sun-Diamond* was prosecuted by an independent counsel, the United States Office of Solicitor General filed an amicus brief adopting the position that "where a gift to a public official is motivated by the recipient's capacity to exercise governmental power or influence in a manner favorable or unfavorable to the donor, the gift is proscribed by Section 201(c)(1)(A), regardless of whether the gratuity is linked to any specific official act." Brief for United States Dept. of Justice as Amicus Curiae, *United States* v. *Sun Diamond*, No. 98-131, 1998 WL 898906 at *11 (U.S. Dec. 17, 1998); see *id.* at *16 ("[A] conviction under the gratuities statute does not require proof that the gift in question

The scope of *Sun-Diamond*'s nexus requirement is not limited to gratuity offenses. First, in reaching its conclusion, this Court interpreted the term "*any* official act" in § 201(c) — the gratuity statute — to mean a "specific" official act. *Sun-Diamond*, 526 U.S. at 406.

In § 201(b) — prohibition of bribery — Congress employed the same term ("any official act") as that used in § 201(c), thereby requiring that the term be defined in the identical manner, i.e., a "specific" act as determined by this Court in *Sun-Diamond*. *Desert Place, Inc.* v. *Costa*, 539 U.S. 90, 101 (2003) ("[I]dentical words used in different parts of the same act are intended to have the same meaning."). Thus, the prohibitions against both illegal gratuities and bribery in § 201 require the government to establish a link between the alleged wrongful conduct and a "specific" official act.

Similarly, the federal programs bribery/gratuity statute (18 U.S.C. § 666), which contains the phrase "*any* business, transaction or series of transactions," must also require the government to establish a link between the improper gift and the *specific* official conduct — not a "kind" of official act if, and as, "opportunities arise."

First, as this Court has acknowledged, "§666(a)(1)(B) was designed to extend federal bribery prohibitions to bribes offered to state and local officials employed by agencies receiving federal funds."

---

was earmarked for any specifically identified official act."); *id.* at *17 ("The government is not required to prove that a gratuity was linked to a specifically identified official act."). This Court rejected the Solicitor General's position outright.

Salinas v. *United States*, 522 U.S. 52, 58-59 (1997); *see also Sabri* v. *United States*, 541 U.S. 600, 606-07 (2004). The Second Circuit itself has previously acknowledged that 18 U.S.C. § 666 (the state bribery/gratuity statute) "was enacted to supplement 18 U.S.C. § 201." *United States* v. *Crozier*, 987 F.2d 893, 898 (2d Cir. 1993). In fact, "[f]or purposes of th[e] appeal," the Second Circuit "presume[d] that the same standard for proving a quid pro quo exists under both 18 U.S.C. § 666 and § 201(b)(1)." Pet. App. 28a n.7.

Second, the requirement that the government prove a causal relationship between a benefit conferred and a specific official act to establish bribery has not been limited to § 201 violations. *See, e.g.*, *Evans*, 504 U.S. at 258 (holding that "passive acceptance of a benefit by a public official is sufficient to form the basis of a Hobbs Act violation if the official knows that he is being offered the payment in exchange for a specific requested exercise of his official power"). As this Court has acknowledged, § 201 is just "[o]ne element of th[e] framework of human laws and regulations defining various sorts of impermissible gifts." *Sun-Diamond*, 526 U.S. at 400. Thus, the phrase "*any* business, transaction or series of transactions" in § 666 requires a link to *specific* official conduct.

In recognition of this Court's requirement for a link between a benefit conferred and a specific official act, the Second Circuit acknowledged that the crime of bribery "requires proof of a quid pro quo," that is, the government must show a "this for these" link between benefits conferred and official acts. Pet. App. 28a (citing *Sun-Diamond*, 526 U.S. at 405). But by holding that the government need *not* prove that the

recipient agreed to perform a *specific* official act (*see, e.g.*, Pet. App. 25a), the Second Circuit eviscerated the important distinction this Court drew in *Sun-Diamond* between payments to public officials that are federally criminalized payments and those which are not.

III. This Case Presents An Important Issue Of The Standard Necessary To Establish The Crime Of Bribery, Implicating Numerous Federal Statutes.

This case presents an important issue of the standard necessary to establish the crime of bribery, which implicates numerous federal criminal statutes. The Second Circuit's removal of the nexus requirement for proving a bribery charge results in a less onerous standard for the "far more serious crime[]" (Pet. App. 24a) of bribery than must be met for the less serious gratuity offense, notwithstanding that the offense of bribery carries criminal penalties that are significantly more severe.

By permitting the jury to convict for the receipt of benefits given to ensure some "particular kinds of influence . . . as specific opportunities ar[i]se," the Second Circuit effectively criminalizes conduct that includes protected lobbying. For example, the offer of meals, sporting event invitations, and even ceremonial sports jerseys (that may or may not violate administrative prohibitions) could be transformed from token gifts and possible civil or administrative infractions into violations of bribery-related offenses even though neither the giver of the benefit nor the recipient have any specific acts in mind. Consequently, when the National Rifle Association or NARAL Pro-Choice America or any other organization provides

something of value to a government official, perhaps the latest biography on the public official or an historical treatise of the institution she serves, a jury could fairly conclude that the gift was given to curry favor (and received with a willingness that the favor be curried) with respect to certain types or "kinds of influence," i.e., gun control or abortion laws, respectively, as "opportunities arise." In *Sun-Diamond*, however, this Court recognized that protection of legal lobbying required the Court to define gift-giving statutes more narrowly, by requiring a link or nexus between a benefit and a "specific" official act. *See Sun-Diamond*, 526 U.S. at 412 ("[A] statute in this field that can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter."). Such a narrow interpretation protects the exercise of constitutionally-protected rights of speech, assembly, and petition.

The statutes at issue in this case are part of a field "litter[ed]" with regulations, which "demonstrate[s] that this is an area where precisely targeted prohibitions are commonplace, and where more general prohibitions have been qualified by numerous exceptions." *Id.* Thus, this Court should grant the petition to clarify that bribery-related crimes are subject to at least the same standard required to establish the lesser included offense of illegal gratuities.

IV. The Jury Instructions Permitted The Jury To Convict On A Lesser Included Offense, Which The Government Did Not Prosecute.

The jury instruction on the federal programs bribery and bribe receipt under Connecticut Law (which is based on § 666, Pet. App. 34a) impermissibly permitted the jury to convict for *either* bribery *or*

illegal gratuities, a lesser included offense that was not prosecuted by the government.

Section 666 imposes criminal liability for both bribery and illegal gratuities (each of which are proscribed by § 201). In this case, the government chose to limit its case to bribery charges only. Nonetheless, the jury charge on the § 666 bribery offense permitted the jury to convict if it found that the public official "accept[ed] or agree[d] to accept a personal benefit, at least in part, with the intent to be improperly influenced *or rewarded*." Pet. App. 34a (emphasis added).

The Court's inclusion of the term "reward" thus allowed the jury to convict for gratuities — a crime not being prosecuted by the government. Pet. App. 35a. The Second Circuit recognized the "unnecessary ambiguity" that inclusion of this term created and instructed that "[f]uture courts, cognizant of the gratuity/bribery distinction in § 666 prosecutions, should endeavor to be more precise." *Id.* In spite of this, the Court of Appeals held that the charge did not necessarily "permit[] the jury to convict on a gratuities theory." Pet. App. 36a. Thus, according to the Second Circuit, inclusion of the term was not clear error and likely did not affect the outcome of the court proceedings. Pet. App. 35a-36a.

However, as explained in *Sun-Diamond*, and recognized by the Second Circuit, "for bribery there must be a *quid pro quo* — a specific intent to give or receive something of value *in exchange* for an official act." *Sun-Diamond*, 526 U.S. at 404-05. Thus, bribery "requires an intent '*to influence*.'" *Id.* (emphasis added). "[I]llegal gratuity, on the other hand, may constitute merely a *reward* for some future act that the public official will take (and may already have de-

termined to take), or for a past act that he has already taken." *Id.* at 405 (emphasis added); *see also* Pet. App. 33a. The concept of "reward" has no place in the bribery charge. In fact, the "punishments prescribed for the two offenses reflect their relative seriousness." *Sun-Diamond*, 526 U.S. at 405.

While the Second Circuit correctly observes that the jury instruction included the phrase "quid pro quo," the inclusion of this language cannot remedy the error of including the "reward" language. The court may have used the term "quid pro quo" in the jury instruction, but it made no attempt to define the phrase. As this Court has acknowledged, "[l]anguage that merely contradicts and does not explain . . . will not suffice to absolve the infirmity." *Francis* v. *Franklin*, 471 U.S. 307, 322 (1985).[7]

Thus, the use of jury instructions permitting a bribery conviction based on a benefit given "to reward" constituted reversible, not harmless, error, especially when viewed through the prism of the multiple other jury instruction errors described above, in which the district court failed to require the government to prove that the public official received a bene-

---

[7] Under the federal gratuity statute, the act motivates the giving of the gift. In contrast, in the case of bribery, it is the gift that motivates the act. See *United States* v. *Sun-Diamond Growers*, 138 F.3d 961, 966 (D.C. Cir. 1998); *United States* v. *Brewster*, 506 F.2d 62, 72 (D.C. Cir. 1974). In either event, there exists a causal relationship between the benefit, on the one hand, and the act on the other, a "this for that." As a consequence, in the absence of any clarification or explanation from the court regarding the meaning of "quid pro quo," the jury would have no basis to distinguish a bribe from a gratuity, especially when simultaneously instructed that an intent to be "rewarded" is sufficient to convict.

fit with the intent to be influenced with respect to one or more "specific" acts.

Even assuming the Court of Appeals correctly held that the § 666 instruction constituted merely "harmless error," it did so only upon determining that the district court's interpretation of the quid pro quo requirement in the bribery-related offenses was correct. Should this Court instead determine that the district court's quid pro quo instructions constituted error, then the cumulative effect of all of the instruction errors would have so tainted the fundamental fairness of the trial that the conviction should be reversed and the matter remanded for further proceedings. *See Taylor* v. *Kentucky*, 436 U.S. 478, 488 n. 15 (1978) ("the cumulative effect" of multiple errors tainted proceeding and required reversal of conviction); *Kentucky* v. *Whorton*, 441 U.S. 786, 789 (1979) (discussing *Taylor*, 436 U.S. 478, and noting that "the failure to give a requested instruction on the presumption of innocence does not in and of itself violate the Constitution" but that "[u]nder *Taylor*, such a failure must be evaluated in light of the totality of the circumstances . . . to determine whether the defendant received a constitutionally fair trial").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ERIC W. BLOOM
COUNSEL OF RECORD
KAREN SUGDEN MANLEY
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, D.C. 20006
(202) 282-5000

Counsel for Petitioner
Joseph P. Ganim

March 2008

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2006

(Argued: June 15, 2007 Decided: December 4, 2007)

Docket No. 03-1448-cr

UNITED STATES OF AMERICA,

Appellee,

- v.-

JOSEPH P. GANIM,

Defendant-Appellant

Before JACOBS, *Chief Judge*,
SOTOMAYOR and WESLEY, Circuit Judges

Defendant-Appellant Joseph Ganim ("Ganim"), the former mayor of Bridgeport, Connecticut, appeals from the judgment of the United States District Court for the District of Connecticut, convicting him, after a jury trial, of racketeering in violation of 18 U.S.C. § 1962(c); racketeering conspiracy in violation

of 18 U.S.C. § 1962(d); extortion in violation of 18 U.S.C. § 1951; honest services mail fraud in violation of 18 U.S.C. §§ 1341 & 1346; bribery involving programs receiving federal funds in violation of 18 U.S.C. § 666(a)(1)(B); conspiracy to commit bribery in violation of 18 U.S.C. § 371; and filing false income tax returns in violation of 26 U.S.C. § 7206(1). In this opinion, we reject Ganim's claim that the jury instructions on the bribery-related offenses were erroneous, and hold that the government was not required to prove a direct link between a benefit Ganim received and a specific act he performed, so long as the government proved that Ganim received benefits in exchange for his agreement to perform specific official acts or to do so as the opportunities arose. We AFFIRM the judgment below.

SANDRA S. GLOVER, Assistant United States Attorney (Ronald S. Apter, Special Assistant United States Attorney, William J. Nardini, Assistant United States Attorney, *on the brief*), *for* Kevin J. O'Connor, United States Attorney for the District of Connecticut, New Haven, CT, *for Appellee*.

ERIC W. BLOOM, Winston & Strawn LLP, Washington, D.C. (Peter Goldberger, Pamela A. Wilk, Alan Ellis, Law Offices of Alan Ellis, Ardmore, PA, Edwin H. Caldie, Winston & Strawn LLP, Washington, D.C., *on the brief*), *for Defendant-Appellant*.

SOTOMAYOR, Circuit Judge:

Defendant-appellant Joseph P. Ganim ("Ganim"), the former mayor of Bridgeport, Connecticut, appeals from the judgment of the United States District Court for the District of Connecticut (Arterton, J.). Ganim was convicted, after a jury trial, of racketeering in violation of 18 U.S.C. § 1962(c); racketeering conspiracy in violation of 18 U.S.C. § 1962(d); extortion in violation of 18 U.S.C. § 1951; honest services mail fraud in violation of 18 U.S.C. §§ 1341 & 1346; bribery involving programs receiving federal funds in violation of 18 U.S.C. § 666(a)(1)(B); conspiracy to commit bribery in violation of 18 U.S.C. § 371; and filing false income tax returns in violation of 26 U.S.C. § 7206(1). Ganim was sentenced principally to 108 months' imprisonment for his offenses.

On appeal, Ganim contends that in order to prove his guilt (on all but the tax crimes), the government was required to link each alleged benefit Ganim received to a specific official act he performed.[1] We hold that the government was not required to allege or to prove that type of direct link, and conclude that the jury was properly charged on the law. In a separate summary order filed today, we reject Ganim's other challenges to his conviction and

---

[1] Ganim advances no argument-save a conclusory one in a footnote of his reply brief-why his conviction on the tax crimes (Counts 22 and 23) would be affected by his arguments concerning the bribery-related crimes. We decline to consider his belated and buried argument, *see United States* v. *Gabriel*, 125 F.3d 89, 100 n. 6 (2d Cir.1997), *abrogated on other grounds by Arthur Andersen LLP* v. *United States*, 544 U.S. 696 (2005), *as recognized in United States* v. *Quattrone*, 441 F.3d 153, 176, 180 n. 28 (2d Cir.2006), and note only that the tax crimes for which he was convicted do not depend on whether the income he failed to report was obtained legally or not.

sentence, and hold that: (1) the indictment and bills of particular sufficiently informed Ganim of the charges against him; (2) the prosecutor's closing remarks did not amount to misconduct warranting reversal; (3) the district court did not err in declining to recess jury deliberations after a juror reported that she may have been fired from her job; and (4) Ganim's resentencing process under *United States* v. *Crosby*, 397 F.3d 103 (2d Cir.2005) was constitutional and his sentence was reasonable. We AFFIRM the judgment below.

BACKGROUND

I. Offense Conduct[2]

Ganim served as the mayor of Bridgeport, Connecticut (the "City") from 1991 through the time of his conviction in 2003. As mayor, Ganim was responsible for the overall operation of municipal government and, among other responsibilities, had final authority over the City's contracts. During his first campaign for mayor, Ganim became acquainted with Leonard J. Grimaldi ("Grimaldi"), who acted as a media advisor, and Paul J. Pinto ("Pinto"), who began as his driver and aide. Ganim developed close relationships with Grimaldi and Pinto over the years that followed. Grimaldi subsequently formed a public relations company called Harbor Communications, of which he was the sole proprietor and employee. Pinto

---

[2] The following account of Ganim's criminal conduct is drawn from the evidence the prosecution adduced at trial, primarily the testimony of the cooperating witnesses Leonard J. Grimaldi and Paul J. Pinto, presented in the light most favorable to the guilty verdict. *See United States* v. *Males*, 459 F.3d 154, 155 (2d Cir. 2006).

became associated with (and later purchased an ownership interest in) the Kasper Group, a Bridgeport architecture and engineering firm.

A. PSG Contract Bid

In 1995 and 1996, Bridgeport was considering privatizing its wastewater treatment facilities. Ganim suggested that Grimaldi contact Professional Services Group ("PSG") to act as PSG's public relations consultant in connection with its bid for the water treatment contract. Grimaldi then contacted PSG, which retained him as a consultant for a fee of $30,000. PSG submitted a proposal for the contract, as did U.S. Water, a competing firm which was represented by Pinto and by United Properties. The owners of United Properties, Albert Lenoci, Sr. and Albert Lenoci, Jr. (the "Lenocis"), were Ganim's political benefactors.

After the bids were submitted, Ganim told Pinto that he had decided to award the contract to PSG, but that Pinto should arrange a financial deal between PSG and United Properties because Ganim did not want to choose between big supporters. Ganim told Pinto that "[i]f they want the deal, they'll do it." In turn, Pinto explained to Grimaldi that if PSG wanted to win the contract, it would have to "take care of the Lenocis." Grimaldi acquiesced, as did PSG upon his advice. PSG agreed to pay Grimaldi $70,000 more per year for the contract's duration, which he was to pass on to Pinto and the Lenocis. Pinto informed Ganim of the deal, and Ganim approved the selection of PSG to operate the wastewater treatment facilities.

Between May 1997 and April 1999, PSG paid Grimaldi roughly $311,396 in consulting fees, much but not all of which Grimaldi paid to Pinto. Grimaldi and Pinto used some portion of this money to provide Ganim benefits such as entertainment, meals and clothing.

B. Fifty-Fifty Fee Sharing Agreement

In December 1996, Ganim traveled with Pinto and Grimaldi to Tucson, Arizona. During the trip, Ganim told them they should "join forces" by agreeing to split any consulting fees they earned through future dealings with the City, and that Ganim would steer contracts to the pair, in return for which they would "tak[e] care of" his expenses and needs. Upon returning to Bridgeport, the three men met to confirm the agreement. Grimaldi testified that during that meeting, he and Pinto agreed that:

> a portion of that money [from the agreement] would be to take care of [Ganim]. If he needed cash, we would take care of him. If he needed suits, we'd take care of him. If he needed shirts, we'd take care of him. Any needs that he required, off of that 50/50 arrangement, we would take care of [Ganim]. In exchange for that, [Ganim] would make sure that all of our clients would get work from the city if they wanted it, that he would steer city contracts and jobs to our clients....

Pursuant to the fee sharing agreement, Ganim steered certain projects (some of which are discussed

below) to Pinto's and Grimaldi's clients from February 1997 to April 1999. Meanwhile, Grimaldi and Pinto provided Ganim with cash, meals, fitness equipment, designer clothing, wine, jewelry and other items. Also at around that time, Grimaldi employed Ganim's wife. At Ganim's insistence, Grimaldi overpaid her, gave her payments in cash and did not report her income to the Internal Revenue Service.

C. Bridgeport Energy-Funded Programs

In 1998, Ganim had Grimaldi arrange for Bridgeport Energy—one of Grimaldi's clients—to contribute one million dollars to fund a promotional advertising campaign and the City's "Clean & Green" program, which demolished and rehabilitated blighted properties. Ganim then arranged for Grimaldi to oversee the advertising campaign and for one of the Lenocis' firms, represented by Pinto, to administer the Clean & Green monies. Pursuant to the fee-sharing agreement, Grimaldi and Pinto used a portion of their consulting fees for these programs to benefit Ganim.

D. PSG Contract Extension & One-Third-Each Fee Sharing

In late 1998, PSG sought a long-term extension of its contract to operate the City's wastewater treatment facilities. In a meeting with Grimaldi and Pinto, Ganim told Grimaldi that he would support the contract extension. In exchange, Grimaldi was to renegotiate his contract with PSG to get more of his consulting fees up front. Ganim also directed that the three men would split those fees—as well as fees from all future deals with the City—one-third each. Gri-

maldi was to pay Ganim's share to Pinto, who would hold the fees for Ganim. Following these discussions, Grimaldi successfully renegotiated his consulting fees with PSG, such that he was paid $495,000 in a front-loaded deal. On May 27, 1999, Ganim awarded PSG the contract extension. Over several weeks Grimaldi paid Pinto roughly two-thirds of the consulting fee, one third of which was for Ganim. Pinto kept Ganim's share mixed with his own money to avoid detection.

Throughout most of 1999, Grimaldi and Pinto provided Ganim—upon his request—with money and benefits such as wine, cabinets, home improvements and meals. Pinto stated at trial that "I was holding [Ganim's] money. When he needed the money, I'd give it to him or use it the way he directed me to...."

In September 1999, Ganim and Grimaldi had a "falling out," and eventually Grimaldi stopped paying Ganim's portion of the money to Pinto. From that point forward, Ganim shunned Grimaldi and prevented his clients from obtaining contracts with the City.

E. Life Insurance Policy

In early 1999, Ganim sought to use City funds to purchase a one-million-dollar life insurance policy for himself, as well as for certain City department heads as "cover." He approached Frank Sullivan ("Sullivan"), a childhood friend who had become a stockbroker, about brokering the deal. Ganim approved the purchase of the policies in April 1999 without the City Council's approval. After the purchase of the policies was leaked to the media, Ganim wrote to The Hartford Life Insurance Company to re-

quest that his own policy be terminated, but did not fill out the appropriate paperwork so that the policy would remain in effect. At the end of the fiscal year, Ganim had the funding for the policies inserted as one of many summary budget transfers, which were approved by the City Council.

Sullivan received a $17,500 commission for serving as the broker for Ganim's policy. Acting on behalf of Ganim, Pinto advised Sullivan that if Sullivan wanted to do more business with the City, he would have to pay a kickback. Sullivan subsequently paid $5,000 in cash for Ganim and Pinto to share.

F. Pension Plans

In the fall of 1999, Sullivan sought to become the broker of record for two municipal pension plans, "Plan A" and "Plan B." Ganim had Pinto tell Sullivan that if he wanted the position, Sullivan would have to give fifty percent of his commissions to Ganim and Pinto. With Ganim's support, Sullivan was appointed as the broker for the Plan B pension in September 1999. The following year, and again with Ganim's support, the Director of Finance for the City of Bridgeport retained Sullivan's investment firm to assist the city in underwriting the Plan A pension. Sullivan received $38,000 as the first installment of his brokerage commission, which he intended to split with Pinto and Ganim. They did not request their respective cuts, however, as they had become anxious about the pending federal investigation against them.

G. Juvenile Detention Facility

In early 1999, the City, pursuant to a State of Connecticut project, was attempting to condemn

property owned by B.C. Sand & Gravel in order to build a juvenile detention facility. B.C. Sand & Gravel retained Pinto, agreeing to pay him $100,000 if he successfully stopped the condemnation. Pinto informed Ganim of the agreement, who then exercised his influence to change the City's position on the condemnation. The State ultimately abandoned the project, and, as a result, Pinto received his fee from B.C. Sand & Gravel. Pinto held half of that fee for Ganim's benefit pursuant to their usual fee sharing arrangement, and from that sum provided Ganim with cash and benefits upon his request.

H. United Properties & Dollar-A-Square-Foot

The Lenocis, principals of United Properties, were seeking in 1998 and 1999 to develop tracts of land in the City, including a site called Father Panik and another called Steel Point. The Lenocis and Pinto worked out a deal whereby United Properties would pay Pinto one dollar for each square foot of space they constructed in the City in the future. Pinto was to use some of that money to "take care of" Ganim, who in turn lobbied to get the Lenocis a long-term lease to develop Father Panik. In 2000, the City sought bids to develop Steel Point. In a November 2000 meeting with Pinto and Ganim, the Lenocis promised to raise $500,000 for Ganim's anticipated gubernatorial campaign in exchange for his commitment to get them the Steel Point project. But the Lenocis did not bid on the project when federal search warrants were executed at United Properties. Because neither the Father Panik nor the Steel Point projects materialized, Ganim and Pinto received no money in connection with these projects.

I. False Income Tax Returns

On his 1998 and 1999 income tax returns, Ganim failed to report as income $47,996 and $265,733, respectively, in cash and benefits provided by Pinto and Grimaldi, including the sums Grimaldi paid to Ganim's wife.

J. Ganim's Defense

Ganim testified in his own defense at trial. He acknowledged that Pinto and Grimaldi provided him with cash, meals, clothing, wine and other gifts, but claimed they did so out of friendship or legitimate lobbying activity. He denied receiving any gifts in exchange for official acts, denied entering any fee-sharing agreement with Pinto and Grimaldi, denied being "partners" with them or being aware of the deals between Pinto and Grimaldi, and claimed that he acted only in the best interest of the City.

Ganim confirmed that his wife had worked for Grimaldi, but claimed that their failure to report her wages was inadvertent. He also admitted acquiring a life insurance policy paid for by City funds but denied having purchased it secretly or without proper City Council authorization.

II. Judicial Proceedings

A. Indictment

Between 1997 and 2001, the Federal Bureau of Investigation and the Internal Revenue Service conducted an investigation of municipal corruption in the City. On October 31, 2001, a grand jury in the United States District Court for the District of Con-

necticut returned a twenty-four count indictment against Ganim, and on March 27, 2002, the grand jury returned a superseding indictment containing the same charges.

Count 1 alleged that Ganim, along with Pinto and Grimaldi, conducted a racketeering enterprise in violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c) ("RICO"), and listed eleven predicate racketeering acts. Count 2 alleged conspiracy to conduct a racketeering enterprise. Counts 3-21, which overlapped with many of the predicate RICO acts, were separately charged as the following crimes: (1) extortion in violation of the Hobbs Act, 18 U.S.C. §§ 1951 & 1952; (2) mail fraud in violation of 18 U.S.C. §§ 1341 & 1346; (3) bribery involving programs receiving federal funds ("federal programs bribery") in violation of 18 U.S.C. § 666; and (4) conspiracy under 18 U.S.C. § 371 to commit bribery under 18 U.S.C. § 666. Counts 22 and 23 alleged the filing of false tax returns in violation of 28 U.S.C. § 7206(1). Count 24 was a forfeiture count under 18 U.S.C. § 1963.

The district court granted Ganim's motion for a bill of particulars, ordering the government to provide "a limited bill" "setting out the specific benefits Ganim is alleged to have received." United States v. Ganim, 225 F.Supp.2d 145, 148, 155 (D.Conn.2002). After receiving the bill of particulars, Ganim moved for a supplemental bill on the grounds that the first was incomplete. The district court granted the motion, and the government subsequently filed a supplemental bill.

B. The Trial and Verdict

Ganim's trial commenced on January 8, 2003, and lasted ten weeks. Before the case was submitted to the jury, Counts 18 and 21 of the indictment were dismissed for reasons not relevant here. After deliberating for eight days, the jury returned a verdict convicting Ganim on 16 of the remaining 22 counts.

C. Sentencing

On July 1, 2003, the district court sentenced Ganim principally to nine years' imprisonment, the top of the 87-108 months Sentencing Guidelines range, followed by a three-year term of supervised release. The court also imposed a fine upon Ganim in the sum of $150,000, ordered him to pay restitution to Bridgeport Energy and to the City in the total amount of $148,617, and ordered Ganim to forfeit $175,000 in proceeds derived from the racketeering enterprise.

Ganim timely appealed, but before briefing was complete, the Supreme Court issued its decision in *United States* v. *Booker*, 543 U.S. 220 (2005), and this Court issued its decision in *United States* v. *Crosby*, 397 F.3d 103 (2d Cir.2005). Pursuant to *Crosby*, this Court remanded Ganim's case to the district court. The district court rejected Ganim's request for resentencing, concluding that it would not have imposed a materially different sentence under an advisory guidelines regime. *United States* v. *Ganim*, 01 Cr. 263(JBA), 2006 WL 1210984, at * 3 (D. Conn. May 5, 2006). Our jurisdiction was reinstated when Ganim notified this Court of the district court's decision.

DISCUSSION

Ganim challenges the jury charges given on the bribery-related crimes at issue: (1) extortion in violation of the Hobbs Act, 18 U.S.C. § 1951; (2) "honest services mail fraud" in violation of 18 U.S.C. §§ 1341 & 1346; (3) federal programs bribery in violation of 18 U.S.C. § 666(a)(1)(b); and (4) bribe receiving in violation of Connecticut General Statutes section 53a-148[3] (collectively, the "bribery-related crimes"). As explained further below, each of these statutes criminalizes, in some respect, a quid pro quo agreement-to wit, a government official's receipt of a benefit in exchange for an act he has performed, or promised to perform, in the exercise of his official authority. Ganim's challenges to the jury charge primarily relate to a single issue: namely, whether proof of a government official's promise to perform a future, but unspecified, official act[4] is sufficient to demonstrate the requisite quid pro quo for a conviction. Ganim essentially claims that at the time a quid pro quo agreement is reached, a direct link must exist between a benefit received and a specifically identified official act. We disagree, and hold that the requisite quid pro quo for the crimes at issue may be satisfied upon a showing that a government official received a benefit in exchange for his promise to perform official acts or to perform such acts as the opportunities arise.

---

[3] This Connecticut statute served as the basis for some of the RICO predicate offenses.

[4] Except where otherwise noted herein, we use the term "official act" in a general sense to mean an act taken under color of official authority, not necessarily as the term is used and statutorily defined in 18 U.S.C. § 201 or elsewhere.

A. Standard of Review

"We review jury charges de novo, reversing only where a charge either failed to inform the jury adequately of the law or misled the jury about the correct legal rule." *United States* v. *Ford*, 435 F.3d 204, 209-10 (2d Cir.2006) (internal citation omitted). No particular form of words is required, so long as "taken as a whole" the instructions correctly convey the required legal principles. *Victor* v. *Nebraska*, 511 U.S. 1, 5 (1994). Moreover, this Court does "not review portions of the instructions in isolation, but rather consider[s] them in their entirety to determine whether, on the whole, they provided the jury with an intelligible and accurate portrayal of the applicable law." *United States* v. *Weintraub*, 273 F.3d 139, 151 (2d Cir.2001).

B. Hobbs Act Extortion

1. Relevant Law

The Hobbs Act makes it a crime to "obstruct[ ], delay[ ], or affect [ ] commerce or the movement of any article or commodity in commerce, by robbery or extortion," and defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(a), (b)(2). Ganim challenges his conviction for extortion "under color of official right."

In *McCormick* v. *United States*, 500 U.S. 257 (1991), the Supreme Court considered the requirements for an extortion conviction under color of official right in the special context of campaign contributions. The Court held:

> The receipt of such contributions is ... vulnerable under the Act as having been taken under color of official right, but only if the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act. In such situations the official asserts that his official conduct will be controlled by the terms of the promise or undertaking.

Id. at 273 (emphasis added). That is, proof of an express promise is necessary when the payments are made in the form of campaign contributions. *Id.* at 273-74. The Court, however, explicitly did "not decide whether a quid pro quo requirement exists in other contexts, such as when an elected official receives gifts, meals, travel expenses, or other items of value." *Id.* at 274 n. 10.

In *Evans* v. *United States*, 504 U.S. 255 (1992), the Court held that an affirmative act of inducement by a public official is not an element of the offense of extortion under color of official right. *Id.* at 257, 268. The Court also found that the jury instruction, which allowed for a conviction if the official accepted money "in exchange for [a] specific requested exercise of his or her official power," satisfied *McCormick*'s quid pro quo requirement. *Id.* at 258, 267. The Court explained that "the offense [of extortion] is completed at the time when the public official receives a payment in return for his agreement to perform specific official acts; fulfillment of the quid pro quo is not an element of the offense." *Id.* at 268. Thus, the Court concluded, the government "need only show that a public official has obtained a payment to which he was not entitled,

knowing that the payment was made in return for official acts." *Id.*

We harmonized *McCormick* and *Evans* in *United States* v. *Garcia*, 992 F.2d 409 (2d Cir.1993), stating:

> Although the *McCormick* Court had ruled that extortion under color of official right in circumstances involving campaign contributions occurs "only if the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act," *Evans* modified this standard in non-campaign contribution cases by requiring that the government show only "that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts."

Garcia, 992 F.2d at 414 (internal citations omitted). Drawing from Justice Kennedy's concurrence in *Evans*, we found that a quid pro quo was required to sustain a conviction in the non-campaign context, but that the agreement may be implied from the official's words and actions because "'otherwise the law's effect could be frustrated by knowing winks and nods.'" *Id.* (quoting *Evans*, 504 U.S. at 274 (Kennedy, J., concurring)).

The facts in *Garcia* were similar to the ones now before us. Over the course of several years, then New York Congressman Robert Garcia solicited money and loans from a defense-contractor company,

and in exchange steered federal projects to the company and interceded on its behalf with banks and government agencies. The jury instruction, given shortly before the Supreme Court's decision in *Evans*, failed to charge the jury that it must find a quid pro quo to convict. Rather, the district court presented three alternative theories that could sustain a conviction: (1) soliciting money "in connection with" the official's duties; (2) offering to confer a benefit or to take some official action (or inaction) in exchang for money; and (3) accepting money that "could reasonably have affected" the exercise of official duties. *Garcia*, 992 F.2d at 413. We reversed the conviction because only the second alternative presented in the jury charge satisfied the quid pro quo standard articulated in Evans. Specifically, we explained that "[a]lthough no explicit agreement between [the company] and Garcia need have been shown, the government must have shown that Garcia received the payment 'knowing that [it] was made in return for official acts.'" *Id.* at 415 (quoting *Evans*, 504 U.S. at 268) (alteration in original). Thus, we explained, "it was not enough for the jury to have concluded that Garcia's acceptance of money was 'in connection with [his] official duties' or 'reasonably' could have 'affected' the performance of his official duties." *Garcia*, 992 F.2d at 415 (quoting *Evans*, 504 U.S. at 268) (alteration in original). Rather, in order to satisfy the requisite quid pro quo, "[t]he jury was required to find that Garcia understood that the payment was made in return for performance of those duties." *Garcia*, 992 F.2d at 415.

Shortly after *Garcia*, we were called upon again in *United States* v. *Coyne*, 4 F.3d 100 (2d Cir.1993), to delineate the contours of the quid pro

quo requirement in the context of a jury charge challenge. *Coyne* concerned the conviction of the Albany County Executive for his extortion of a $30,000 "loan" from the owner of a company he had helped to obtain a lucrative city contract. We upheld the following Hobbs Act jury instruction:

> [Y]ou may only find the defendant guilty of this crime if you find that he obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts rather than being given voluntarily or unrelated to the defendant's office. The defendant need not have affirmatively induced the payment by his actions, but he must know the payment is offered in exchange for a specific requested exercise of his official power in order to violate the statute.

Id. at 113-14. We found that the instruction "tracked the Supreme Court's statement in Evans." *Id.* at 114. We also explained that "the government does not have to prove an explicit promise to perform a particular act made at the time of payment." *Id.* Instead, "it is sufficient if the public official understands that he or she is expected as a result of the payment to exercise particular kinds of influence—i.e., on behalf of the payor—as specific opportunities arose." *Id.* (internal citation omitted).

2. Jury Charge

In charging the jury on the elements of extortion, the district court explained that the government

was required to prove that "the defendant wrongfully used the authority of his office or position to obtain the money, goods or services to which he was not entitled."[5] The court continued:

> To satisfy this element, the government must prove that the defendant obtained a payment to which he was not entitled by use of his office, *knowing that the payment was made in return for official acts rather than being given voluntarily or unrelated to the defendant's official position.* The defendant need not have initiated the payments, but he must have *known that the payment was made in exchange for a specific exercise of the defendant's official powers.* You do not have to determine whether the defendant could or did actually perform the service, or whether he actually had a duty to do so.
>
> The government does not have to prove an explicit promise to perform a particular act made at the time of payment. *It is sufficient if the defendant understood he was expected as a result of the payment to exercise particular kinds of influence, that is, on behalf of the payor, as specific opportunities arose.*(emphasis added)

---

[5] The jury was charged on the law of Hobbs Act extortion in connection with Count 1 (racketeering acts 1A and 6), and then again in summary form in connection with Count 3.

Both parties appear to agree that the language in the first paragraph—requiring that the defendant know "that the payment was made in return for official acts," and "that the payment was made in exchange for a specific exercise of the defendant's official powers"—accurately portrays the applicable quid pro quo standard. Ganim objects, however, to the statement in the second paragraph that "[i]t is sufficient if the defendant understood he was expected as a result of the payment to exercise particular kinds of influence, that is, on behalf of the payor, as specific opportunities arose." He claims that this instruction misled the jury as to what establishes a quid pro quo under the Hobbs Act, because it did not require the jury to find "that any of the benefits received were connected to a 'specific' act."

To the extent Ganim objects to the "particular kinds of influence" phraseology in the second paragraph quoted above from the jury charge, we find no error. Because the preceding paragraph in the charge clearly articulated the "payment ... in return for official acts" quid pro quo, the phrase "kinds of influence," which might otherwise be ambiguous, would only be understood to refer to undertaking the official acts that made up Ganim's part of the bargain.

Moreover, to the extent Ganim claims that the benefits received must be directly linked to a particular act at the time of agreement, he overstates the law. We explained in Coyne, in language mirroring the jury charge here, that "it is sufficient if the public official understands that he or she is expected as a result of the payment to exercise particular kinds of influence—i.e., on behalf of the payor—as specific opportunities arise." *See Coyne*, 4 F.3d at 114; *see also*

United States v. *Bradley*, 173 F.3d 225, 231-32 (3d Cir.1999) (upholding Hobbs Act jury instruction containing substantially similar language).[6] Our statement in *Coyne* is a natural corollary of *Evans'* pronouncement that the government need not prove the existence of an explicit agreement at the time a payment is received, *Evans*, 504 U.S. at 268. *See Coyne*, 4 F.3d at 114 (implicitly drawing the connection); *see also Bradley*, 173 F.3d at 231-32 (same). Rather, it is enough that a "public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." *Evans*, 504 U.S. at 268. Moreover, given that the crime of extortion occurs without regard to whether the promised official act is carried out, see id. ("[F]ulfillment of the quid pro quo is not an element of the offense."), Ganim's proposal—that a specific act be identified and directly linked to a benefit at the time the benefit is received—demands too much.

In contending otherwise, Ganim's reliance on *United States* v. *Sun-Diamond Growers of California*, 526 U.S. 398 (1999), is misplaced. *Sun-Diamond* was a trade association convicted of providing illegal gratuities under 18 U.S.C. § 201(c)(1)(A) for having given tickets, meals and other items to the Secretary of Agriculture. Id. at 401. The indictment "alluded to two matters" "before the Secretary in which [Sun-Diamond] had an interest," but "did not allege a specific connection between either of them—or between any other action of the Secretary—and the gratuities conferred." *Id.* at 401-02. The district court instructed

---

[6] To the extent that our statement in Coyne was dicta, insofar as the jury charge did not contain the "as specific opportunities arise" language, we now hold what we stated then.

the jury that it could convict Sun-Diamond of giving illegal gratuities if it found that "Sun-Diamond provided [the Secretary] with unauthorized compensation simply because he held public office," and that "[t]he government need not prove that the alleged gratuity was linked to a specific or identifiable official act or any act at all." *Id.* at 403. The issue before the Supreme Court was whether a "conviction under the illegal gratuity statute requires any showing beyond the fact that a gratuity was given because of the recipient's official position." *Id.* at 400. The Court held that the statute did require something more; namely, "a link between a thing of value conferred upon a public official and a specific 'official act' for or because of which it was given." *Id.* at 414. The Court explained that a contrary ruling would not "fit comfortably with the statutory text, which prohibits only gratuities given or received 'for or because of any official act performed or to be performed,'" and then defines "official act" as "'any decision or action on any question, matter, cause, suit, proceeding or controversy.'" *Id.* at 406 (alteration in original) (quoting 18 U.S.C. § 201(a)(3), (c)(1)(A)). The Court also explained that, if an official's position rather than an official's act were sufficient to convict, the line between illegal and legal gift giving would be indiscernible. *Id.* at 408-11.

Ganim seems to acknowledge, as he must, that *Sun-Diamond*'s holding does not on its face extend to the extortion statute, or to any other of the bribery-related statutes under which he was convicted. He nonetheless argues that common sense requires us to extend this direct link requirement beyond the gratuities context to the bribery-related crimes at issue. Otherwise, he contends, the government would be

able to convict upon proof of a "less exacting nexus" than it must to demonstrate a gratuities offense, notwithstanding that extortion and bribery are far more serious crimes that carry more severe criminal penalties. But Ganim's argument misapprehends *Sun-Diamond*.

To begin, there is good reason to limit *Sun-Diamond*'s holding to the statute at issue in that case, as it was the very text of the illegal gratuity statute—"for or because of *any official act* "—that led the Court to its conclusion that a direct nexus was required to sustain a conviction under § 201(c)(1)(A). *Sun-Diamond*, 526 U.S. at 406, 119 (alternation in original) ("The insistence upon an 'official act,' carefully defined, seems pregnant with the requirement that some particular official act be identified and proved."). Neither the Hobbs Act provision under which Ganim was convicted, 18 U.S.C. § 1951, nor any other of the bribery-related statutes at issue, contain the same express statutory requirement. *See* 18 U.S.C. § 1951(b)(2) (proscribing the "obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."); 18 U.S.C. § 666(a)(1)(B) (making it illegal for a local public official to "corruptly solicit[ ] or demand [ ] for the benefit of any person, or accept[ ] or agree[ ] to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions" of the local government "involving any thing of value of $5,000 or more"); 18 U.S.C. §§ 1341 & 1346 (criminalizing the use of the mails for the purpose of executing a "scheme or artifice to deprive another of the intangible right of honest services"); Conn. Gen.Stat. 53a-

148(a) ("A public servant or a person selected to be a public servant is guilty of bribe receiving if he solicits, accepts or agrees to accept from another person any benefit for, because of, or as consideration for his decision, opinion, recommendation or vote.").

Nor is there any principled reason to extend *Sun-Diamond*'s holding beyond the illegal gratuity context. Undergirding the Court's decision in *Sun-Diamond* was a need to distinguish legal gratuities (given to curry favor because of an official's position) from illegal gratuities (given because of a specific act). The Court offered a strictly worded requirement that the government show a link to a "specific official act" to supply a limiting principle that would distinguish an illegal gratuity from a legal one. The same limiting principle is not needed in the extortion or bribery contexts, however, because it is the requirement of an intent to perform an act in exchange for a benefit—i.e., the quid pro quo agreement—that distinguishes those crimes from both legal and illegal gratuities. *See United States* v. *Alfisi*, 308 F.3d 144, 149-52 (2d Cir.2002) (declining to extend *Sun-Diamond*' s holding to bribery under 18 U.S.C. § 201(b)(1)(A) which contains the element of a quid pro quo or a direct exchange).

Thus, now, as before *Sun-Diamond*, so long as the jury finds that an official accepted gifts in exchange for a promise to perform official acts for the giver, it need not find that the specific act to be performed was identified at the time of the promise, nor need it link each specific benefit to a single official act. To require otherwise could subvert the ends of justice in cases—such as the one before us—involving ongoing schemes. In our view, a scheme involving

payments at regular intervals in exchange for specific officials acts as the opportunities to commit those acts arise does not dilute the requisite criminal intent or make the scheme any less "extortionate." Indeed, a reading of the statute that excluded such schemes would legalize some of the most pervasive and entrenched corruption, and cannot be what Congress intended.

Our post-*Sun Diamond* decision in *United States* v. *Middlemiss*, 217 F.3d 112 (2d Cir.2000), upon which Ganim relies, does not suggest otherwise. In *Middlemiss*, the victim paid defendants monthly payments of $2,000, and a final payment of $45,000, "because [the victim] reasonably believed that [the defendants] had power to influence airport and other officials who could terminate his cafeteria lease or begin administrative investigations into the health and tax code compliance of his businesses." *Id.* at 117. We found no plain error in a Hobbs Act jury instruction that the defendants "had to know a link" existed between the payments and their acts. *Id.* at 121-22. Contrary to Ganim's suggestion, we did not extend *Sun-Diamond*'s holding to the extortion context in *Middlemiss*. We simply noted that the jury charge at issue in *Middlemiss*, unlike the one in Sun-Diamond, conveyed that the official "had to know a link existed" between the money paid and the official act performed, and for that reason defendant's reliance on *Sun-Diamond* was unavailing. Neither the jury charge nor our decision, however, required a direct this-for-that relationship between each payment and benefit. Rather, we explained that the government, more generally, "'need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for

official acts.'" *Id.* at 117 (quoting *United States* v. *Delano*, 55 F.3d 720, 731 (2d Cir.1995)).

In short, requiring a jury to find a quid pro quo, as governing law does, ensures that a particular payment is made in exchange for a commitment to perform official acts to benefit the payor in the future. Once the quid pro quo has been established, however, the specific transactions comprising the illegal scheme need not match up this for that. While it frequently will be true that particular bribes or extorted payments are linked at the time of the corrupt agreement to particular official acts, that will not always be the case—for example, because the opportunity to undertake the requested act has not arisen, or because the payment is one of a series to ensure an ongoing commitment to perform acts to further the payor's interests. Accordingly, the Hobbs Act jury instructions were not erroneous.

C. "Honest Services" Mail Fraud

1. Relevant Law

Title 18, Section 1341 of the United States Code criminalizes the use of the mails for the purpose of executing a "scheme or artifice to defraud." 18 U.S.C. § 1341. When mail fraud is prosecuted as a scheme or artifice "to deprive another of the intangible right of honest services,"18 U.S.C. § 1346, it is referred to as "honest services mail fraud"; when it is prosecuted simply as a scheme to deprive another of property by means of false pretenses, it is referred to as "traditional mail fraud." The government clarified during pretrial proceedings that it would prosecute the honest services mail fraud charges "as a scheme

to deprive the citizenry of Ganim's honest services by bribery of (or extortion by) an elected official." *See United States* v. *Ganim*, 225 F.Supp.2d 145, 147 (D.Conn.2002). Thus, the honest services mail fraud charges—which are the only ones challenged here—were all tried under the substantive law of either extortion or bribery.[7]

Like extortion, the crime of bribery requires a quid pro quo. *See, e.g., Alfisi*, 308 F.3d at 148 ("[B]ribery ... requires a quid pro quo element."); *see also Sun-Diamond*, 526 U.S. at 405 (distinguishing an illegal gratuity from a bribe which "requires proof of a quid pro quo"). And, like in the extortion cases, donors and recipients engaged in ongoing bribery schemes do not always spell out in advance the specific match between gift and act. For example, in *United States* v. *Bonito*, 57 F.3d 167 (2d Cir.1995), we upheld the conviction of a real estate developer who gave a car to a city housing official as a bribe, but

---

[7] For purposes of this appeal, we presume that the same standard for proving a quid pro quo exists under both 18 U.S.C. § 666 and § 201(b)(1), as neither party has argued that there is, or should be, any difference of which we should be cognizant. *See United States* v. *Ford*, 435 F.3d 204, 213 (2d Cir.2006) (citing Sun-Diamond for the proposition that bribery under § 666 requires a quid pro quo); *Alfisi*, 308 F.3d at 149 (citing Sun-Diamond for the proposition that bribery under § 201(b)(1) requires a quid pro quo). We note here, and have held previously, that there are other differences between the two provisions that are salient under circumstances not present here. *See Ford*, 435 F.3d at 210 & n. 2, 213-14 & n. 5 (stating that "the language of the two provisions differs in significant respects," including that "Section 201 lacks an explicit intent requirement as to recipients of alleged bribes while Section 666 contains one," and concluding that those differences were important with respect to the level of awareness each provision required of the recipient of a bribe).

when the deal the developer hoped the official could ensure fell through, the official found other ways of using his position for the developer's financial benefit. *Id.* at 169-71, 174. We found the jury charge sufficient because it required the jury to find a corrupt intent on the part of the payor to influence the performance of official acts. *Id.* at 171.

The Fourth Circuit also shares our view that, in order to establish the quid pro quo essential to proving bribery, "the government need not show that the defendant intended for his payments to be tied to specific official acts (or omissions)." *United States* v. *Jennings*, 160 F.3d 1006, 1014 (4th Cir.1998). In *Jennings*, a construction contractor was convicted of federal programs bribery under 18 U.S.C. § 666(a)(2) for giving a series of cash payments to a city official responsible for awarding jobs renovating vacant housing units. *Id.* at 1010-12. In return for the money, the official steered contracts to Jennings worth hundreds of thousands of dollars. *Id.* In upholding the bribery conviction, the Fourth Circuit emphasized that bribery required an intent to effect an exchange, but that "each payment need not be correlated with a specific official act.... In other words, the intended exchange in bribery can be 'this for these' or 'these for these', not just 'this for that.'" *Id.* at 1014 (internal citation omitted). Thus, bribery can be accomplished through an ongoing course of conduct, so long as evidence shows that the "favors and gifts flowing to a public official [are] in exchange for a pattern of official actions favorable to the donor." *Id.* (emphasis in original) (internal quotation omitted).

2. Jury Charge

The district court charged the jury that it could convict Ganim for honest services mail fraud if the jury found that he engaged in a scheme to receive something of value either through bribery or through extortion.[8] As the jury had already been instructed on the elements of extortion, the court turned to the crime of bribery:

> The term "bribe" means a corrupt payment that a public official accepted or agreed to accept with the intent to be influenced in the performance of his or her public duties. *A bribe requires some specific quid pro quo, a Latin phrase meaning this for that or these for those, that is, a specific official action in return for the payment or benefit. If the public official knows that he or she is expected as a result of the payment to exercise particular kinds of influence or decision making to the benefit of the payor, and, at the time the payment is accepted, intended to do so as specific opportunities arose, that is bribery.*
>
> * * *
>
> [B]ribery is not proved if the benefit is intended to be, and accepted as simply an effort to buy favor or generalized goodwill from a public official who ei-

---

[8] The jury was charged on the law of honest services mail fraud in connection with Count 1 (racketeering acts 1B, 1C, 1D, 2B, 3A, 3B, 4A, 4B, 7B, 7C, 7D, 7E, 8B and 9), and, for Counts 4-6, 8, 14, 17 and 19, was referred back to the charge on the related racketeering acts.

> ther has been, is, or may be at some unknown, unspecified later time, be in a position to act favorably on the giver's interests—favorably to the giver's interest. That describes legal lobbying.
>
> * * *
>
> Public officials may lawfully receive a campaign contribution, and he or she may also lawfully accept a personal benefit if his or her intent in taking those items is solely to cultivate a relationship with the person or persons who provided them. (emphasis added).

Once again, Ganim objects that by permitting the jury to convict based on the defendant's knowledge that he is "expected as a result of the payment to exercise particular kinds of influence or decision making to the benefit of the payor, and, at the time payment is accepted, intended to do so as specific opportunities arose," the charge was improperly broad. Ganim argues that the later instruction—that accepting a benefit that is "intended to ... buy favor or generalized goodwill" from an official who may "at some unknown, unspecified later time, be in a position to act favorably"—did not cure the earlier error because the two instructions "cannot be reconciled."

We find no error in the instruction. Even more specifically than did the charge on extortion, the passage quoted above explained that "[a] bribe requires some specific quid pro quo ... that is, a specific official action in return for the payment or benefit." This statement conformed even to the heightened concep-

tion of a quid pro quo that Ganim urges this Court to adopt. Further, the district court set forth in detail the type of "legal lobbying" that is *not* bribery—the precise activity Ganim is concerned an overly broad charge could sweep up. Taken as a whole, this charge "provided the jury with an intelligible and accurate portrayal of the applicable law" pertaining to bribery and thus to honest services mail fraud. *United States* v. *Weintraub*, 273 F.3d 139, 151 (2d Cir.2001). And, for the reasons explained above, his reliance on *Sun-Diamond* is misplaced. *Cf. Alfisi*, 308 F.3d at 151 n. 4 ("We do not agree that Sun-Diamond requires us to define the crime of bribery narrowly....*Sun-Diamond*...says nothing about bribery....").

D. Federal Programs Bribery and Bribe Receipt Under Connecticut Law

1. Relevant Law

One is guilty of a crime under 18 U.S.C. § 666 if he is an agent of local government and "corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions" of the local government "involving any thing of value of $5,000 or more." 18 U.S.C. § 666(a)(1)(B). The parties agree that, for purposes of this case, the law of bribe receiving under Connecticut law is governed by the same legal framework pertaining to 18 U.S.C. § 666.[9]

---

[9] The jury was charged on the law of federal programs bribery in connection with Count 7, and referred back to that charge in connection with the counts of conspiracy to commit federal pro-

We have interpreted § 666 to impose criminal liability for both kinds of crime proscribed by § 201: bribery and illegal gratuities. Specifically, we held in *United States* v. *Crozier*, 987 F.2d 893 (2d Cir.1993), that a predecessor of the current § 666 criminalized both bribery and illegal gratuities, because that statute's language making it a crime to accept a thing of value for or because of the recipient's conduct in any transactions "includes both past acts supporting a gratuity theory and future acts necessary for a bribery theory." *Id.* at 899. Although the current version of the statute does not contain the "for or because of" language, we held in *Bonito* that "the deleted language has been replaced with language that is to the same effect"—namely, that "the payment must be 'to influence or reward' the official conduct." 57 F.3d at 171 (quoting 18 U.S.C. § 666(a)(1)(B)). We intimated there that a payment made to "influence" connotes bribery, whereas a payment made to "reward" connotes an illegal gratuity. *Id.*; *cf. Sun-Diamond*, 526 U.S. at 404-05 (explaining that under 18 U.S.C. § 201, "[b]ribery requires intent 'to influence'" whereas an illegal gratuity "may constitute merely a reward for some future act"). The government implicitly

---

grams bribery, Counts 16 and 20. The jury was charged on the law of bribe receiving under Connecticut law in connection with Count 1 (racketeering acts 2A, 7A, 81, 8C, 8D, 10A). Ganim's brief expressed the position that he treats the substantive law under the Connecticut bribe receiving statute as identical, for purposes relevant to this appeal, to bribery under federal law. The government confirmed at oral argument that it held the same position. We do not address the jury instruction for the charges based on bribe receiving under Connecticut law because Ganim has not separately challenged those instructions, except in a passing footnote in his reply brief, and on grounds not presented to the district court.

agreed in its brief that § 666 proscribes both bribery and gratuities, and confirmed at oral argument that it agreed to prosecute violations of the statute as bribery only.

2. Jury Charge

The district court's charge on federal programs bribery instructed the jury, in pertinent part, as follows:

> The third element that the government must prove is that the defendant acted with the corrupt intent to be influenced or rewarded in connection with some business, transaction or series of transactions of the City of Bridgeport itself or one of its agencies. *A "corrupt intent" means the intent to engage in some specific quid pro quo*...or the intent to give some advantage inconsistent with official duty and the rights of others. "Corruptly" means having an improper motive or purpose.
>
> Put another way, a public official acts corruptly if he solicits, accepts or agrees to accept a personal benefit, at least in part, *with the intent to be improperly influenced or rewarded* in connection with the performance of an official act. The motive to act corruptly is ordinarily a hope or an expectation of either financial gain or other benefit to one's self or some profit or benefit to another. (emphasis added).

The jury charge language that Ganim objects to with respect to the other bribery-related crimes-i.e., phrases like "kinds of influence" or "as specific opportunities arise"—are absent from this charge. Ganim argues, however, that the instruction "incorporates its own, unique error" in the form of the word "rewarded." He claims the district court's use of the word "reward," in the second paragraph above, permitted the jury to convict Ganim on a gratuities theory rather than a bribery theory.[10]

Given the law in this circuit, *see, e.g., Bonito*, 57 F.3d at 171, the inclusion of the word "rewarded" in the charge introduced unnecessary ambiguity as it may have implied an illegal gratuity theory which the government, in fact, had not pursued. Future courts, cognizant of the gratuity/bribery distinction in § 666 prosecutions, should endeavor to be more precise. Ganim, however, failed to object to the "influenced or rewarded" language at trial, despite raising a different objection to the § 666 instruction that is not at issue in this appeal.[11] We therefore review the charge for plain error, reversing only if the error is clear or obvious and affects substantial rights. *United States v. Olano*, 507 U.S. 725, 733-34, 123 L.Ed.2d 508 (1993). To affect substantial rights, an error "must have been prejudicial: It must have affected the out-

---

[10] Ganim also objects to the charge's reference to a "series of transactions," which "watered down the quid pro quo" by eliminating the requirement that the benefit be linked to a single, specific act. As the government notes, the phrase appears in the statute itself, so there is no error.

[11] Indeed, the Defendant's Requests to Charge filed with the district court itself included the phrase "intending to be influenced or rewarded," not once but three times.

come of the district court proceedings." *Id.* at 734, 113 S.Ct. 1770.

Here, it was not clear or obvious that using the word "reward" was error, particularly because the phrase "influenced or rewarded" is contained in the statute itself. 18 U.S.C. § 666(a)(1)(B). Moreover, it is unlikely that including the word had any effect at all, much less one "affect[ing] the outcome of the district court proceedings." *Olano*, 507 U.S. at 734. That is, we cannot conclude that the charge as given permitted the jury to convict on a gratuities theory. A jury would not have understood the word "reward" to have any particular legal meaning beyond that ascribed to it in the instructions, and the district court plainly instructed the jury that to convict Ganim of federal programs bribery, it would have to find a "specific quid pro quo." As *Sun-Diamond* explained, what distinguishes a bribe from a gratuity is its intent element: only bribery requires "the specific intent to give or receive something of value in exchange for an official act." *Sun-Diamond*, 526 U.S. at 404-05 (emphasis in original). Because the jury was required to find that element, it necessarily convicted Ganim of bribery under 18 U.S.C. § 666, rather than the lesser included offense of receiving illegal gratuities. Thus, to the extent there was error in the § 666 jury instruction, it was not plain error.

CONCLUSION

For the foregoing reasons, we hold that the jury instructions required the jury to find a sufficiently specific nexus between the personal benefits Ganim received and the official acts he agreed to perform in return for them. And for the additional rea-

sons discussed in our accompanying summary order, we AFFIRM the judgment of conviction.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF A FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, in the City of New York, on the 4th day of December, two thousand and seven.

PRESENT:

HON. DENNIS JACOBS,
Chief Judge,
HON. SONIA SOTOMAYOR,
HON. RICHARD C. WESLEY,
Circuit Judges.

United States of America,

Appellee,

- v.- No. 03-1448-cr

Joseph P. Ganim,

Defendant-Appellant.

For Appellee: SANDRA S. GLOVER, Assistant United States Attorney (Ronald S. Apter, Special Assistant United States Attorney, William J. Nardini, Assistant United States Attorney, *on the brief*), *for* Kevin J. O'Connor, United States Attorney for the District of Connecticut, New Haven, Connecticut.

For Defendant-Apppellant: ERIC W. BLOOM, Winston & Strawn LLP, Washington, D.C. (Peter Goldberger, Pamela A. Wilk, Alan Ellis, Law Offices of Alan Ellis, Ardmore, PA, Edwin H. Caldie, Winston

& Strawn LLP, Washington, D.C., *on the brief*).

Defendant-Appellant Joseph Ganim ("Ganim"), the former mayor of Bridgeport, Connecticut, appeals from the judgment of the United States District Court for the District of Connecticut (Arterton, J.), convicting him, following a jury trial, of racketeering in violation of 18 U.S.C. § 1962(c); racketeering conspiracy in violation of 18 U.S.C. § 1962(d); extortion in violation of 18 U.S.C. § 1951; honest services mail fraud in violation of 18 U.S.C. §§ 1341 & 1346; bribery involving programs receiving federal funds in violation of 18 U.S.C. § 666(a)(1)(B); conspiracy to commit bribery in violation of 18 U.S.C. § 371; and filing false income tax returns in violation of 26 U.S.C. § 7206(1). Ganim was sentenced principally to 108 months' imprisonment. In a separate opinion issued today, we address Ganim's jury charge challenges, and hold that the government was not required to prove a direct link between a benefit Ganim received and a specific act he performed, so long as the government proved that Ganim received benefits in exchange for his agreement to perform specific official acts or to do so as the opportunities arose. In this summary order, we address Ganim's additional challenges to his conviction and sentence. We assume the parties' familiarity with the facts and procedural history, which is set forth more fully in our companion opinion.

First, we reject Ganim's contention that the indictment, as particularized, was insufficient. "[A]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend,

and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." *United States* v. *LaSpina,* 299 F.3d 165, 177 (2d Cir.2002) (internal citation omitted). So long as an indictment "delineates the elements of a charged offense, however concisely," *United States* v. *Stavroulakis,* 952 F.2d 686, 693 (2d Cir.1992), we may in reviewing the sufficiency of the indictment on appeal consider the indictment "[a]s amplified by" a bill of particulars, *United States* v. *Eskow,* 422 F.2d 1060, 1064 (2d Cir.1970). In this case, each bribery-related count of the supplemented indictment set forth benefits Ganim received in exchange for his promises to perform official acts; thus, the government sufficiently alleged the requisite quid pro quo. Although Ganim claims that the government failed to link directly each specific benefit he received to a specific act of official malfeasance, the law does not demand this degree of specificity to convict, much less to put him on adequate notice of the charges against him.

Second, Ganim argues that the prosecutor's rebuttal summation constituted misconduct warranting reversal. As Ganim did not make a timely objection, we reverse only if the statements amounted to a "flagrant abuse", *United States* v. *Rivera,* 22 F.3d 430, 437 (2d Cir.1994), which caused him substantial prejudice, *see United States* v. *Bautista,* 23 F.3d 726, 732 (2d Cir.1994). Ganim alleges that the prosecutor made improper comments centering around three inappropriate themes: (1) that Ganim's defense was so absurd that if the jurors failed to convict, they were "suckers"; (2) that the jurors should convict based not only on the evidence, but on their general dislike of politicians; and (3) that the cooperating witnesses' guilty pleas constituted substantive evidence of

Ganim's guilt. We have condemned remarks that seek to call the jury's intelligence into doubt, *see United States* v. *Marrale,* 695 F.2d 658, 667 (2d Cir.1982) (citing examples), and have described as improper tactics calculated to "inflame the passions of the jury," *United States* v. *Elias,* 285 F.3d 183, 190 (2d. Cir.2002). However, we have only reversed for improper prosecutorial statements in extreme cases, where a "repeated pattern of misconduct" gave rise to "grave doubts about the fairness of the proceeding below." *United States* v. *Gonzalez,* 488 F.2d 833, 836 (2d Cir.1973) (reversing because prosecutor misrepresented evidence, repeatedly called defendant a liar, and used inflammatory language); *see also United States* v. *Drummond,* 481 F.2d 62, 64 (2d Cir.1973) (similar)."Inappropriate prosecutorial comments, standing alone, would not justify a reviewing court to reverse a criminal conviction obtained in an otherwise fair proceeding." *United States* v. *Young,* 470 U.S. 1, 11 (1985). Although some of the prosecutor's statements here harkened close to the line of inappropriateness, they did not rise to the level of "flagrant abuse." The prosecutor's statements were at least in part a "fair response" to questions raised by defense counsel about the credibility of the prosecution's witnesses. *United States* v. *Tocco,* 135 F.3d 116, 130 (2d Cir.1998) ("[W]here the defense summation makes arguments and allegations against the government, the prosecutor may respond to them in rebuttal."). Moreover, while the guilty plea of a co-defendant cannot be used as substantive evidence of a defendant's guilt, the district court provided a limiting instruction to this effect, and thus cured any prejudice that might otherwise have stemmed from the government's closing remarks to which Ganim now objects. *See United States* v. *Prawl,* 168 F.3d 622,

625-27 (2d Cir.1999) (to avoid improper implication, cautionary instruction is mandatory if requested).

Third, Ganim argues that the court erred in declining to recess jury deliberations, sua sponte, for the remainder of March 19, 2003, after a juror notified the court that she may have been fired from her job as a result of her participation in the trial. As Ganim did not raise the issue at the time of the event, the standard of review is plain error. Fed.R.Crim.P. 52(b); *see United States* v. *Keppler,* 2 F.3d 21, 23 (2d Cir.1993). Here, the district court committed no error, much less plain error. The juror did not ask to be excused or object to the court's direction to continue deliberations that day, and when the court inquired whether the juror felt she was unable to continue deliberations, the juror indicated that she was able to continue. The district court thus acted well within its discretion in permitting deliberations to continue. *See United States* v. *Paulino,* 445 F.3d 211, 226 (2d Cir.2006) ("[T]rial courts [have] wide latitude to make an informed decision on all kinds of problems ... that may befall a juror during jury deliberations."(internal quotation marks omitted)).

Fourth, Ganim advances a generalized challenge to the constitutionality of the resentencing process this Court established in *United States* v. *Crosby,* 397 F.3d 103 (2d Cir.2005), admittedly in order to preserve the issue for review "at another level." Because this Court is bound by *Crosby* unless and until it is overruled by the Supreme Court or this Court sitting en banc, *United States* v. *Santiago,* 268 F.3d 151, 154-55 (2d Cir.2001), we decline to reconsider *Crosby* here.

Finally, Ganim alleges that the sentence imposed by the district court was unreasonable for two reasons. First, he contends that the court reached its original sentencing determination without considering mitigating circumstances, particularly Ganim's accomplishments as mayor, as required by 18 U.S.C. § 3553(a). The transcript of the district court's initial decision, however, reflects that Judge Arterton indeed considered Ganim's good works as mayor, but believed his corruption was so severe that mitigation was not warranted; in other words, as she remarked, "[t]here is no exception for corruption for the good mayors."On remand, Judge Arterton further explained her reasoning:

> The Court recognizes its duty under 18 U.S.C. § 3553(a)(1) to consider the defendant's history and characteristics, including his accomplishments as mayor, and already has considered this information, but remains persuaded that it should be given a lesser weight in the context of a top elected municipal official who criminally and shamelessly flouts his lawful authority and the public trust.

United States v. *Ganim*, 01 Cr. 263(JDA), 2006 WL 1210984, at * 3 (D.Conn. May 5, 2006). Her determination not to reduce Ganim's sentence on this basis was reasonable. *See United States* v. *Fernandez*, 443 F.3d 19, 32 (2d Cir.2006).

Ganim's second argument is that the district court erred in refusing to reduce his sentence in light of the statistics he presented on national average fed-

eral bribery sentences. But these statistics gave no indication that they pertained to "similarly situated" individuals, as required by 18 U.S.C. § 3553(a)(6). *Fernandez*, 443 F.3d at 31-32. Nor was the district court obligated to hold a hearing on this topic, as Ganim claims, where he failed to proffer competent evidence.

We reject the remaining arguments raised by Ganim as meritless.

UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED AND DECREED that the judgment of conviction is AFFIRMED.

APPENDIX C

United States District Court
District of Connecticut

UNITED STATES	:	
v.	:	No. 3:01cr263(JBA)
	:	
Joseph P. GANIM	:	

Order on Motion for Filing of Supplemental Bill of Particulars [Doc. # 81]

ARTERTON, District Judge.

In its ruling on defendant's motion to dismiss [Doc. # 50], the Court ordered the Government to file a "limited bill of particulars" setting forth "particularization of the benefits allegedly provided to Ganim, whether actual or constructive," or, stated differently, "each benefit (whether actual or constructive) that Ganim is alleged to have received, solicited or otherwise procured or attempted to procure in connection with the pending charges." Ruling on Mot. to Dismiss at 20, 22, and 41. The Court also stated that defendant's motion for a bill of particulars "is GRANTED as to ¶¶ 8(a)-(c) of the motion." *Id.* at 40. Paragraphs 8(a)-(c) of defendant's bill of particulars motion state in pertinent part,

> The Government is asked to particularize as to each alleged racketeering act or other counts of the indictment in which it is claimed that defendant Ganim solicited, accepted, agreed to accept a benefit, currency, shared meals, entertainment, or goods or services, that with

respect to each such act the following:

a. identify the specific benefit;
b. the person who conferred or provided it;
c. the date on, and place at which it was conferred or provided ...

Def.'s Mot. for Bill of Particulars at 3. The Government subsequently filed a Bill of Particulars [Doc. # 80] setting forth the date, payor, and amount of sixty-five particularized benefits. Govt.'s Bill of Particulars at 1-4.

Defendant now moves this Court to order the Government to file a supplemental bill of particulars "identifying which official acts were the object of the recited benefits and things of value allegedly given to Mayor Ganim." Def.'s Opp'n to Govt.'s Mot. at 8. Government responds by stating that it fully complied with the Court's order, and that "the indictment, read in conjunction with the bill of particulars, clearly provides defendant with the requisite notice of the nature and scope of the charges pending against him." Govt.'s Mem. in Opp'n at 1.

The Court finds Government's compliance with the Court's order, although in good faith, incomplete. Although the Court did not expressly articulate all the contours of the form that the bill was supposed to take, the Government was directed to provide a bill of particulars that, by incorporation of paragraphs 8(a)-(c) of defendant's bill of particulars motion, particularized the benefits and things of value allegedly received by Mr. Ganim "as to each alleged racketeering act or other counts of the indictment." The Government's bill, while setting forth sixty-five particular-

ized benefits, fails to link those benefits to any of the alleged racketeering acts or other counts charged in the indictment.

Accordingly, defendant's motion for Filing of a Supplemental Bill of Particulars [Doc. # 81] is GRANTED insofar as the Government is directed to match each of the sixty-five benefits listed in the Government's original bill of particulars with each alleged racketeering act or other count charged in the indictment with respect to which the Government claims such benefit was allegedly provided to defendant.

IT IS SO ORDERED.

/s/
Janet Bond Arterton
United States District Judge

Dated at New Haven, Connecticut, this 20th day of November 2002.

APPENDIX D

United States District Court
District of Connecticut

UNITED STATES	:	
	:	Criminal No.
v.	:	3:01CR263(JBA)
	:	
Joseph P. GANIM	:	September 12, 2002

Ruling on Motion to Dismiss Indictment

ARTERTON, District Judge.

The primary issues presented in this motion by Bridgeport Mayor Joseph Ganim to dismiss the indictment pending against him are Ganim's contentions that portions of the indictment's "honest services" mail fraud allegations must fail because (1) the mail fraud statute under which they are brought does not provide the requisite notice that the acts alleged in the indictment are proscribed by the statute and (2) the indictment's allegations of an ill-defined scheme fail to provide him with the notice of what he is alleged to have done that violates that law. While Ganim's argument has currency given the wording of both the statute and indictment, the Government at the conclusion of oral argument on this motion clarified that this scheme will be prosecuted at trial only as a scheme to deprive the citizenry of Ganim's honest services by bribery of (or extortion by) an elected official. Thus, the jury's consideration will be confined to whether the Government has proved a scheme whereby Ganim demanded, sought, received or agreed to receive something of value either with the specific corrupt intent to be influenced in the performance of an official act (bribery) or through the

unlawful use of force, violence or fear (extortion).

Additionally, the Court *sua sponte* vacates part of its earlier ruling denying Ganim's request for a bill of particulars and directs the Government to provide particularization of the specific benefits Ganim is alleged to have unlawfully received. With these clarifications and limitations, the Court concludes that the indictment (read in light of the forthcoming bill of particulars) charges offenses for which the mail fraud statute provides the requisite notice that the acts are criminalized by the statute, and gives Ganim adequate notice of the charges against him.

Ganim's remaining arguments, which address the RICO counts, other aspects of the mail fraud charges, and the constitutionality of the federal-program bribery statute, are either without merit or must await determination at trial after the presentation of the Government's evidence. For the reasons elaborated below, the defendant's motion to dismiss is denied in its entirety, the Court's order denying Ganim's motion for a bill of particulars is vacated in part, and a bill of particulars setting out the specific benefits Ganim is alleged to have received is ordered.

I. Introduction

On October 31, 2001, a federal grand jury returned a 24 count indictment against Ganim, the sitting mayor of Bridgeport, Connecticut. Ganim filed a motion to dismiss portions of the indictment on March 15, 2002. On March 27, 2002, a Superseding Indictment was filed, and on July 1, 2002 oral argument was held.

The first count of the indictment[1] charges Ganim with violating the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"). Ganim is alleged to have been engaged in a racketeering enterprise with Pinto, Leonard Grimaldi, the Office of the Mayor, and unnamed others. The *modus operandi* of the enterprise is alleged to have been the solicitation and acceptance of various bribes and kickbacks from companies and individuals seeking to do business with the City of Bridgeport ("City" or "Bridgeport"), as well as other attempts to realize unlawful gain. Ganim is alleged to have engaged in eleven racketeering acts: (1) in connection with the privatization of Bridgeport's waste waster system, Professional Services Group ("PSG"), the low bidder on the contract, was forced to pay Pinto and Grimaldi $311,000 to obtain the contract, in violation of the Hobbs Act[2] and the federal mail fraud statute[3]; (2) in

---

[1] All references to the indictment are to the Superseding Indictment.

[2] 18 U.S.C. § 1951(a) ("Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both."). "The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(b)(2).

[3] 18 U.S.C. § 1341 ("Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises ... for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing what-

connection with the extension of the waste water contract, Ganim is alleged to have received $156,000 (through Pinto and Grimaldi) from PSG, in violation of the Connecticut bribe receiving statute[4] and the federal mail fraud statute; (3) in connection with the construction of the Harbor Yard Stadium, Ganim is alleged to have taken (through Pinto and Grimaldi) cash and other property, including meals and entertainment, from the Kasper Group, in violation of the federal mail fraud statute; (4) in connection with the construction of a hockey arena, Ganim is alleged to have taken (through Pinto and Grimaldi) cash and other property, including meals and entertainment, from the Kasper Group, in violation of the federal mail fraud statute; (5) Ganim is alleged to have used City funds to buy himself a $1 million life insurance policy, in violation of the federal mail fraud statute; (6) Ganim is alleged to have violated the Hobbs Act by extorting a $5,000 kickback from Frank Sullivan, a financial consultant, on the commission Sullivan earned in connection with the City's purchase of the life insurance policy; (7) Ganim is alleged to have violated the Connecticut bribe receiving statute and the federal mail fraud statute in selecting Sullivan as financial advisor and broker for municipal pension plans in return for payment to Ganim and Pinto of a

---

ever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing ... is guilty of mail fraud."). "[T]he term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services." 18 U.S.C. § 1346.

[4] Conn.Gen.Stat. § 53a-148(a) ("A public servant ... is guilty of bribe receiving if he solicits, accepts or agrees to accept from another person any benefit for, because of, or as consideration for his decision, opinion, recommendation or vote.").

portion of any commissions; (8) Ganim is alleged to have received (through Pinto) property from Alfred Lenoci, Jr., president of UER, in exchange for selecting UER and Harbor Communications to oversee City programs funded by Bridgeport Energy, in violation of the Connecticut bribe receiving statute and the federal mail fraud statute; (9) Ganim is alleged to have violated the federal mail fraud statute in taking $50,000 (through Pinto) from B & C Gravel for supporting relocation of the juvenile court; (10) Ganim is alleged to have received property for selecting a company owned by Alfred Lenoci, Jr., and Alfred Lenoci, Sr., as the preferred developer for vacant strips of land in Bridgeport, in violation of the Connecticut bribe receiving statute and the federal mail fraud statute; and (11) Ganim is alleged to have violated the federal mail fraud statute by causing the City to extend sewer service to his residence cost-free.

In addition to the RICO allegations in count one, the majority of the racketeering acts that form the basis of the RICO count correspond to substantive counts of the indictment. For example, the Hobbs Act violation in Racketeering Act 6 (the alleged life insurance kickback) also forms the basis of the substantive Hobbs Act violation found in Count Fifteen. The two counts of false tax returns are not the subject of Ganim's motion to dismiss.

II. Standard

"The indictment ... shall be a plain, concise and definite written statement of the essential facts constituting the offense charged." Fed.R.Crim.P. 7(c)(1). "[A]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a

defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." *Hamling* v. *United States,* 418 U.S. 87, 117, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974) (citations omitted). "It is generally sufficient that an indictment set forth the offense in the words of the statute itself, as long as those words of themselves fully, directly, and expressly ... set forth all the elements necessary to constitute the offence intended to be punished." *Id.* at 177, 94 S.Ct. 2887 (quotations omitted). The indictment "must descend to particulars," however, if "the definition of an offence ... includes generic terms." *United States* v. *Cruikshank,* 92 U.S. 542, 558, 2 Otto 542, 23 L.Ed. 588 (1875) (citation omitted); *accord United States* v. *Pirro,* 212 F.3d 86, 92-93 (2d Cir.2000).

In the absence of a full proffer of the Government's evidence, "the sufficiency of the evidence is not appropriately addressed on a pretrial motion to dismiss an indictment,"*United States* v. *Alfonso,* 143 F.3d 772, 776-777 (2d Cir.1998) (reversing dismissal of an indictment when the district court "looked beyond the face of the indictment and drew inferences as to the proof that would be introduced by the government at trial" to satisfy an element of the charge); *accord Costello* v. *United States,* 350 U.S. 359, 363, 76 S.Ct. 406, 100 L.Ed. 397 (1956) (If "valid on its face," a grand jury indictment "is enough to call for trial of the charge on the merits.") (citations and footnote omitted).

III. Vagueness / Notice of Charges

In Racketeering Acts 1B, 1C, 1D, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 7B, 7C, 7D, 8B, 9, 10B, 11A and 11B (and the corresponding substantive counts 4-6, 8-14, and 17-21) of the indictment, Ganim is charged with violating the federal mail fraud statute, 18 U.S.C. § 1341.[5] Only four[6] of the charged mail fraud Racketeering Acts charge what may be termed 'traditional' mail fraud; that is, a scheme to "obtain[ ] money or property by means of false or fraudulent pretenses, representations, or promises...." (These counts are not the subject of Ganim's vagueness arguments.) The remaining ten[7] are brought under 18 U.S.C § 1346, which provides that "the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services."

Ganim advances two separate challenges to these "honest services" portions of the indictment: (1) the statute under which they are brought does not provide the requisite notice that the acts alleged in the indictment are proscribed by the statute and (2) the indictment's lack of particularity as to the benefits he is alleged to have received fails to provide him with

---

[5] "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises ... for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing ... is guilty of mail fraud."

[6] Racketeering Acts 5A, 5B, 11A and 11B.

[7] Racketeering Acts 1B, 1C, 1D, 2B, 3A, 3B, 4A, 4B, 7B, 7C, 7D, 7E, 8B, 8E, 9, and 10B.

notice of what he is alleged to have done that violates that law.

A. Notice that the Alleged Conduct is Prohibited by the Mail Fraud Statute

This argument proceeds in two steps. First, Ganim asserts that the "honest services" portions of the indictment allege as crimes only the receipt by a public official of gratuities, without any allegation of intent to be corruptly influenced. For example, the indictment charges that in January 1997, Alfred Lenoci, Jr., hired Paul Pinto to assist Lenoci's company, United Environmental Redevelopment ("UER"), in obtaining environmental remediation and demolition contracts in Bridgeport. Pinto allegedly used a portion of the fees he received from UER "to provide personal benefits," which the indictment alleges include but are not limited to cash, meals, entertainment and merchandise, to Ganim. UER was subsequently selected for several City projects. On these facts, the indictment charges that Ganim is guilty of federal mail fraud in that he "knowingly devised and participated in a scheme or artifice to defraud and deprive the citizens of Bridgeport of their right to the honest and impartial performance of the official duties of the Mayor...." ¶ 209.

While the indictment alleges that the giver of the gifts intended for Ganim to be influenced, the indictment is silent as to Ganim's alleged state of mind in receiving the alleged meals and other gifts.[8] The

---

[8] The mail fraud portion of this charge is alleged as Racketeering Act 8B, which is composed of ¶¶ 108-110. These paragraphs incorporate by reference ¶¶ 8(c) and 100-106. It is only in ¶ 107 (which is not incorporated by reference), however, that Ganim is

Government's initial position at oral argument confirmed its view that Ganim's intent to participate in this "scheme" sufficed to support a charge under the mail fraud statute. The Government refers only to a "corrupt link between a benefit and an official act," arguing that the crux of the crime is an undefined scheme: "It's the government's burden to prove beyond a reasonable doubt that there is intent there, intent to defraud, intent to participate in this scheme, and we're talking about a scheme to defraud." Tr. [Doc. # 70] at 23. "It's the scheme. It's the intent to defraud. It's the entering into these agreements to conduct this illegal business outside of the awares of the citizens of Bridgeport...." Tr. [Doc. # 70] at 29.

Next, Ganim points to the lack of specificity in the mail fraud statute itself, arguing that even if the statute can properly be given the Government's expansive reading, it cannot be said to provide sufficient notice that the receipt of personal benefits, without a corrupt intent on the part of the recipient, is unlawful under that statute, and thus is constitutionally infirm. *See, e.g., Lanzetta* v. *New Jersey,* 306 U.S. 451, 453, 59 S.Ct. 618, 83 L.Ed. 888 (1939) ("No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.") (citations omitted); *Papachristou* v. *City of Jacksonville,* 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972). He highlights this

---

alleged to have received these personal benefits "as consideration for" his selection of UER. Thus, while Racketeering Act 8A (Connecticut Bribe Receiving) charges that Ganim specifically intended to be influenced when he received the alleged benefits, Racketeering Act 8B (Mail Fraud) contains no such allegation.

argument by pointing to the specific element of other laws, such as the Connecticut bribe receiving statute, Conn.Gen.Stat. § 53a-148(a) ("A public servant ... is guilty of bribe receiving if he solicits, accepts or agrees to accept from another person any benefit *for, because of, or as consideration for* his decision, opinion, recommendation or vote:") (emphasis added); 18 U.S.C. § 666(a)(1)(B) (prohibiting certain municipal officials from "corruptly solicit [ing] or demand[ing] for the benefit of any person, or accept[ing] or agree [ing] to accept, anything of value from any person, *intending to be influenced or rewarded in connection with* any business, transaction, or series of transactions" of the municipality) (emphasis added); and the provisions of the Bridgeport Ethics Code that allow for the receipt of gifts by public office holders so long as the gifts are not received "under circumstances in which it can reasonably be inferred that the gift is intended to influence him in the performance of his duties or employment in the public interest," Bridgeport Ethics Code § 2.38.030(B)(1), and specifically exclude even from this prohibition "food or beverage or both, consumed on a single occasion, the cost of which is less than fifty dollars ($50.00) per person,"*id.* § 2.38.020.

The use of an "honest services" theory of criminality under the mail fraud statute began as an uncodified interpretation of the statute that gained currency in the lower courts:

> After [Congress amended the statute in 1909], the mail fraud statute criminalized schemes or artifices "to defraud" or "for obtaining money or property by means of false or fraudulent pretenses,

> representation[s], or promises...." Because the two phrases identifying the proscribed schemes appear in the disjunctive, it is arguable that they are to be construed independently and that the money-or-property requirement of the latter phrase does not limit schemes to defraud to those aimed at causing deprivation of money or property. This is the approach that has been taken by each of the Courts of Appeals that has addressed the issue: schemes to defraud include those designed to deprive individuals, the people, or the government of intangible rights, such as the right to have public officials perform their duties honestly.

McNally v. *United States,* 483 U.S. 350, 358, 107 S.Ct. 2875, 97 L.Ed.2d 292 (1987) (*citing United States* v. *Clapps,* 732 F.2d 1148, 1152 (3rd Cir.1984); *United States* v. *States,* 488 F.2d 761, 764 (8th Cir.1973)). In 1987, the Supreme Court rejected this construction, noting the potential for ambiguity inherent in the honest services doctrine: "Rather than construe the statute in a manner that leaves its outer boundaries ambiguous and involves the federal government setting standards of disclosure and good government for local and state officials, we read § 1341 as limited in scope to the protection of property rights." *Id.* at 360,107 S.Ct. 2875.

In response to *McNally,* Congress enacted § 1346, which codifies the interpretation of the statute that had been adopted by the lower courts before *McNally.* While some courts resurrected pre-*McNally* stan-

dards of honest services deprivation after the enactment of § 1346, *e.g., United States* v. *Frost,* 125 F.3d 346, 364 (6th Cir.1997), the Second Circuit expressly rejected this course in *United States* v. *Sancho,* 157 F.3d 918, 922 (2d Cir.1998) ("What the government must prove to satisfy [the honest services] element of the offense is defined by § 1346-not by judicial decisions that sought to interpret the mail and wire fraud statutes prior to the passage of § 1346.").

In light of the rejection of pre-*McNally* case law defining the scope of the honest services prohibition and the inherent malleability of the term "honest services," a recent Second Circuit opinion has expressed doubts as to the constitutionality of the "honest services" provision:

> The plain meaning of "honest services" in the text of § 1346 simply provides no clue to the public or the courts as to what conduct is prohibited under the statute. Judge Jolly observed in 1997 that the terms "intangible right" and "honest services" cannot be found in Black's Law Dictionary, the United States Code, or (for that matter) any federal statute other than § 1346. That observation remains accurate today. Clearly, "'honest services' has not achieved the status of a commonly accepted and recognized term of art which Congress could have been relying upon in using these words.... The phrase is ... inherently undefined and ambiguous."

United States v. *Handakas,* 286 F.3d 92, 104 (2d

Cir.2002) (*citing* and *quoting United Stated* v. *Brumley*, 116 F.3d 728, 742, 746 (5th Cir.1997) (Jolly, J., dissenting)); *see also id.* ("If we were the first panel [of the Second Circuit] attempting to discern the meaning of the phrase 'honest services' in § 1346, we would likely find that part of the statute so vague as to be unconstitutional on its face.").

The *Handakas* majority's concerns are well-illustrated in this case. If an elected official in Connecticut attempted to determine whether his or her receipt of gratuities, without any corrupt intent, violated the federal mail fraud statute, there would be little guidance available. If the official looked to municipal ethics codes, the answer would depend on which town the official lived in. Some municipal ethics codes flatly prohibit all gifts, *see, e.g.*, West Hartford Code § 16-9[9]; New Haven Code Art. XXXVII § 211,[10] Norwich Code Art. IV § 2-54(c),[11] while others

---

[9] No official "shall accept or solicit any gift, whether in the form of service, loan, thing, promise or any other form, from any person who, to his or her knowledge, is interested, directly or indirectly, in any manner whatsoever, in business dealings with the town, *or* which gift may tend to influence such officer, official or employee in the discharge of his or her official duties ..." (emphasis added).

[10] "The receipt of any valuable gift, thing, loan or promise by any elected official ... from any person [who] to his knowledge is directly interested in any business dealing with the city" is grounds for removal from office.

[11] "No officer, official or employee shall accept or solicit any gift, whether in the form of service, loan, thing, promise or any other form, from any person who, to his or her knowledge, is interested, directly or indirectly, in any manner whatsoever, in business dealings with the city, or which gift may tend to influence him or her in the discharge of official duties or in granting any improper favor, service or thing of value."

are more circumscribed in their prohibitions, *e.g.*, Danbury Code § 2-166(a)(3).[12] *Compare, e.g.*, the codes cited above containing blanket prohibitions on all gifts, *with, e.g.*, Hartford Municipal Code § 2-459 (excluding from the definition of "gift" anything costing less than $100 and "food or beverage or both, costing less than fifty dollars ($50.00) per person and consumed on a single occasion at which the person paying [for the meal] is in attendance)" and Bridgeport Code of Ethics 2.38.020 (set out above). Additionally, an elected official looking to other provisions of federal law for guidance[13] as to whether § 1341 prohibited receipt of all gratuities would note that there is a specific statute, 18 U.S.C. § 201(c)(1)(B), addressing this conduct, called "illegal gratuity statute" by the Supreme Court.[14] While only applicable to federal officials, *see* 18 U.S.C. § 201(a)(1), the statute prohibits the receipt of "anything of value" by a present, past, or future public official "for or because of any official act performed or to be performed by such official or person," and thus prohibits conduct that is less than outright bribery.[15] Inasmuch as a federal offi-

---

[12] Prohibiting only acceptance of gifts "based on any understanding that the vote, official action, or judgment of the [official] would be or had been influenced thereby."

[13] *E.g.*, *Kokoszka* v. *Belford*, 417 U.S. 642, 650, 94 S.Ct. 2431, 41 L.Ed.2d 374 (1974) (when interpreting a statute, consideration must be taken of other statutes on the same subject).

[14] *United States* v. *Sun-Diamond Growers of California*, 526 U.S. 398, 400, 119 S.Ct. 1402, 143 L.Ed.2d 576 (1999).

[15] While bribery entails a *quid pro quo*, "[a]n illegal gratuity, on the other hand, may constitute merely a reward for some future act that the public official will take (and may already have determined to take), or for a past act that he has already taken." *Sun-Diamond Growers*, 526 U.S. at 404-405, 119 S.Ct. 1402.

cial would be subject to both the "honest services" provision of the mail fraud statute and this illegal gratuity statute, to interpret the statutes as meaning that conduct made unlawful by the latter, more specific statute (with its two year maximum penalty) would also be covered by the former, non-specific statute (with its twenty year maximum penalty) is counter-intuitive. *Compare* 18 U.S.C. § 201(c) (possible imprisonment of two years) *with* 18 U.S.C. § 1341 (possible imprisonment of twenty years).

The *Handakas* court, however, did not hold § 1346 facially unconstitutional, noting that two prior panel decisions, *Sancho* and *United States* v. *Middlemiss,* 217 F.3d 112 (2d Cir.2000), had given some content to the honest services language. *Handakas,* 286 F.3d at 106-107;*see also United States* v. *Rybicki,* 287 F.3d 257, 263-264 (2d Cir.2002). The Second Circuit has recently decided to consider, *en banc,* whether the statute is unconstitutionally vague on its face. *See* Order, *United States* v. *Rybicki,* Nos. 00-1043(L), 00-1044(CON), 00-1052(XAP), 00-1055(CON) (2d Cir. July 3, 2002) (accepting *en banc* review of panel decision reported at 287 F.3d 257 and directing parties to brief "whether 18 U.S.C. § 1346 is unconstitutionally vague on its face"). However, unless and until a contrary decision is reached in the *en banc* consideration of *Rybicki,* the controlling law of this Circuit is that § 1346 is not unconstitutional on its face.

Ganim concedes as much, Tr. [Doc. # 70] at 39-40, and agrees that if the honest services provisions of the indictment are construed as charges of a bribery[16]

---

[16] "[F]or bribery there must be a *quid pro quo* -- a specific intent to give or receive something of value in exchange for an official

or extortion scheme, his vagueness claims would be obviated, *see id.* at 8 and 41-42. At the conclusion of oral argument and in response to these vagueness concerns, Government represented that the honest services charges tried to the jury will be limited to a scheme of bribery or extortion by Ganim, *see id.* at 43-44; *cf. also* Govt's Supp. Mem. [Doc. # 67] at 5 n. 5 (asserting that "like the federal mail fraud statute," the federal-programs bribery statute [18 U.S.C. § 666]"does not provide a safe haven for public officials who corruptly accept bribes and other personal benefits from lobbyists *intending to be influenced* in the exercise of their official duties") (emphasis added; citations omitted).

Construing the indictment in this fashion ensures that Ganim had sufficient prior notice of the unlawfulness of the criminal acts he is alleged to have committed. Insofar as § 1346 contains an ascertainable standard of conduct (and the law in this Circuit is that it does), bribe receiving and extortion by elected officials are squarely within the heartland of the statute, as represented by the cases distinguished by the *Handakas* majority. *See Handakas,* 286 F.3d at 111-112 (distinguishing *United States* v. *Frega,* 179 F.3d 793, 803 (9th Cir.1999) (bribery of state judges); *United States* v. *Brumley,* 116 F.3d 728, 732-33 (5th Cir.1997) (*en banc*) (bribe solicitation by state employee); *United States* v. *Paradies,* 98 F.3d 1266, 1282-83 (11th Cir.1996) (bribery of a public offi-

---

act." *United States* v. *Sun-Diamond Growers of California,* 526 U.S. 398, 404-405, 119 S.Ct. 1402, 143 L.Ed.2d 576 (1999).

cial)).[FN17]

Without doubt, an elected official is on notice that demanding, seeking, receiving or agreeing to receive something of value either with the specific intent to be influenced in the performance of an official act or through the unlawful use of force, violence or fear, is unlawful and is criminalized by numerous statutes. *See, e.g.,* Conn.Gen.Stat. § 53a-148(a); 18 U.S.C. § 666(a)(1)(B); 18 U.S.C. § 1951(a). Since the honest services portions of the indictment will be construed as allegations of bribery or extortion by an elected official, Ganim has no standing to challenge other, possibly unconstitutional applications of the statute, unless the Second Circuit determines that the statute is facially unconstitutional. *See Parker* v. *Levy,* 417 U.S. 733, 755-756, 94 S.Ct. 2547, 41 L.Ed.2d 439 (1974) (in an as-applied vagueness challenge, "[o]ne to whose conduct a statute clearly applies may not successfully challenge it for vagueness"; if, however, a statute is unconstitutional on its face, it is vague "'in the sense that no standard of conduct is specified at all'") (*quoting Coates* v. *City of Cincinnati,* 402 U.S. 611, 614, 91 S.Ct. 1686, 29 L.Ed.2d 214 (1971)).

B. Notice of Pending Charges

---

[17] Although the convictions upheld as constitutional in *Rybicki, Sancho* and *Middlemiss* involved schemes "in which the defendant breached or induced the breach of a duty owed by an employee or agent to his employer or principal that was enforceable by an action at tort," *Rybicki,* 287 F.3d at 264 (*citing Handakas*)," *Rybicki's* description of cases that have upheld convictions pursuant to § 1346 is not exhaustive of all the situations that satisfy the statute," *United States* v. *Viertel,* No. S2 01 CR. 571(JGK), 2002 WL 1560805 at *9 (S.D.N.Y. July 15, 2002).

Ganim next takes issue with the indictment's lack of particularity regarding the benefits he is alleged to have received in exchange for official acts. *See, e.g., United States* v. *Lamont,* 236 F.2d 312 (2d Cir.1956) ("It is of course the function of an indictment to set forth without unnecessary embroidery the essential facts constituting the offense and thus accurately acquaint the defendant with the specific crime with which he is charged.") (*citing, inter alia,* Fed.R.Crim.P. 7(c)). Although the list of benefits in ¶ 8(c) has a veneer of precision in that it alleges specific gifts along with the alleged value and date of the gift (e.g., the list contains a men's suit valued at $1,700 allegedly received in January 1996), this precision evaporates upon closer examination. The indictment includes the clause "among others" in the sentence introducing the list, and at oral argument the Government represented that the list is "by no means exclusive," and is only "an exhaustive list of the types of benefits" allegedly provided to Ganim. Tr. [Doc. # 70] at 25. Inasmuch as ¶ 8(c) contains myriad *types* of benefits (e.g., clothing, appliances, jewelry, wine, professional services, landscaping services), the indictment as it stands gives Ganim insufficient notice of the benefits that he is alleged to have received. If, for example, the evidence at trial showed that the alleged $1,700 suit in January 1996 in fact never existed, or was paid for out of Ganim's own funds, or was a late Christmas gift from a relative, nothing precludes the Government from offering other evidence of this *type* of benefit, such as another suit, given on another date, as the actual benefit claimed in the Government's case.

Given this uncertainty, brought to the fore in oral argument, the Court concludes that a limited bill of

particulars is warranted in this case. Fed.R.Crim.P. 7(f) provides:

> The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

The Advisory Committee notes from a 1966 amendment eliminating the requirement of a showing of cause explain that this amendment was "designed to encourage a more liberal attitude by the courts toward bills of particulars without taking away the discretion which courts must have in dealing with such motions in individual cases."

"The proper scope and function of a bill of particulars is to furnish facts supplemental to those contained in the indictment which are necessary to apprise the defendant of the charges against him with sufficient precision so as to enable him to prepare his defense, to avoid unfair surprise at trial, and to preclude a second prosecution for the same offense." *United States* v. *Matos-Peralta,* 691 F.Supp. 780, 791 (S.D.N.Y.1988) (*citing United States* v. *Bortnovsky,* 820 F.2d 572, 574 (2d Cir.1987)).

> It is repeated over and over again in the cases that a bill of particulars may not call for an evidentiary matter. Other cases say that the government will not be required to disclose its legal theory

> on a bill of particulars.... Any generalized propositions of this sort must necessarily be unsatisfactory. The bill of particulars ... is intended to give the defendant enough information about the charge so that he or she may adequately prepare a defense and so that surprise may be avoided. It is not intended, as such, as a means of learning the government's evidence and theories. But to the extent that information is needed for the proper purposes of the bill, it will be required even if the effect is disclosure of evidence or of theories.

Wright, Federal Practice and Procedure: Criminal 3d § 129 at 659-660 (*citing, inter alia, United States* v. *Russo,* 260 F.2d 849, 850 (2d Cir.1958)) ("It is obviously a matter of degree how far an accused must be advised in advance of the details of the evidence that will be produced against him, and no definite rules are possible. All that can be said is that he must know enough to be able to produce in season whatever evidence he may have in answer, and that the charge must become clear enough at the trial to make the judgment available to him on a future plea of 'former jeopardy.'").

While no bill of particulars is required if the information sought has been obtained through the discovery process, *Bortnovsky,* 820 F.2d at 574, the Government appears unwilling to concede that particularization of the benefits allegedly received will be provided by discovery. *See* Tr. [Doc. # 70] at 25-26; Govt's Opp.Mot. Bill of Particulars [Doc. # 31] at 12 (characterizing Ganim's request for particularization

of benefits received as "tantamount to a request for the government to state its legal and evidentiary theories regarding the crimes alleged in the indictment ...").

The Court concludes that insofar as Ganim's motion for a bill of particulars [Doc. # 26] sought particularization of the benefits allegedly provided to Ganim, whether actual or constructive, such particularization has now been shown to be necessary to enable him to prepare his defense and to avoid unfair surprise at trial, and thus the Court's ruling denying the motion will be vacated and the motion granted as to the benefits allegedly received. With this particularization, Ganim will have the requisite notice of the nature and scope of the charges pending against him, and thus dismissal of these counts of the indictment is not warranted.

IV. Mail Fraud — "Furtherance"

Ganim also challenges several of the mail fraud counts as failing to meet the statutory requirement that the mailing in question be in furtherance of a fraudulent scheme. He argues that several of the mailings asserted in the Racketeering Acts and corresponding substantive counts must fail because they were not "in furtherance" of the alleged schemes or frauds identified in those counts. Specifically, Ganim takes issue with: (1) the PSG counsel letter in Racketeering Act 2B, which he contends was mailed before the scheme or fraud was agreed to; (2) the credit card statements in Racketeering Acts 3A and 4A; and (3) the quarterly life insurance report in Racketeering

Act 5B.[18]

"[A] mailing is in furtherance of a fraudulent scheme when it is incidental to an essential part of the scheme or a step in the plot." *United States* v. *Tocco,* 135 F.3d 116, 124 (2d Cir.1998) (*citing Pereira* v. *United States,* 347 U.S. 1, 8-9, 74 S.Ct. 358, 98 L.Ed. 435 (1954) and *Badders* v. *United States,* 240 U.S. 391, 394, 36 S.Ct. 367, 60 L.Ed. 706 (1916) (quotations omitted)). The Supreme Court's most recent application of this requirement was in *Schmuck* v. *United States,* 489 U.S. 705, 109 S.Ct. 1443, 103 L.Ed.2d 734 (1989), involving a defendant used car wholesaler who had engaged in odometer fraud. Schmuck sold the tampered-with cars to retail dealers, who in turn sold them to consumers. In connection with these latter sales (retail dealers to consumers), the retail dealers mailed title application forms to the state. The Court affirmed Schmuck's mail fraud conviction, which was based on the title application mailings, determining that these mailings were "in furtherance" of the odometer-fixing fraud: "although the registration-form mailings may not have contributed directly to the duping of either the retail dealers or the customers, they were necessary to the passage of title, which in turn was essential to Schmuck's scheme." *Id.* at 711-712, 109 S.Ct. 1443.

In *United States* v. *Slevin,* 106 F.3d 1086 (2d Cir.1996), the Second Circuit held that "[w]here the frauds are not isolated or related swindles, postfraud

---

[18] Ganim's claims relating to Racketeering Acts 1D and 1E are apparently moot in light of the superseding indictment, which replaced the original allegations about credit card statements with other mailings which are not addressed in Ganim's subsequent briefing.

mailing of invoices, checks, or receipts may further the scheme by, for example, lulling the victims into believing they received the services fraudulently promised or by helping to keep the scheme in operation by preserving a needed business relationship between a fraud victim and defendant." *Id.* at 1089-1090 (*citing United States* v. *Paccione,* 949 F.2d 1183, 1196 (2d Cir.1991); *United States* v. *Angelilli,* 660 F.2d 23, 36-37 (2d Cir.1981); *Schmuck,* 489 U.S. at 711-712, 109 S.Ct. 1443).

A. Racketeering Act 2B

In Racketeering Act 2, Ganim is alleged to have solicited a $156,000 bribe from Pinto and Grimaldi in return for approving the extension of PSG's contract to manage waste water facilities. This was allegedly carried out by having Grimaldi enter into a new, $695,000 consulting agreement with PSG, and upon approval of the extension, Grimaldi would pay two-thirds of the fees he received to Pinto. Half of what Pinto received would be held for the benefit of Ganim. The indictment alleges that in furtherance of this scheme, a letter from PSG's legal counsel to Grimaldi regarding the consulting agreement was placed in the mail.

Ganim asserts that this mailing was not "in furtherance" of any alleged fraud because the letter was mailed on April 9, 1999, while the alleged scheme in which Grimaldi would pay Pinto (who would in turn pay Ganim) a portion of the fees was not agreed to until April 12, 1999. Thus, Ganim argues, the mailing preceded the scheme and cannot be "in furtherance" of the scheme.

The indictment alleges that when Grimaldi renegotiated his contract with PSG on April 9, 1999, he did so "with the knowledge and at the direction of [Ganim]." ¶ 28. The consulting agreement between PSG and Grimaldi is therefore alleged to be the first link in the chain that ultimately was to put money in Ganim's pocket in exchange for approval of the extension. Given the allegation that Ganim directed Grimaldi to renegotiate this contract, and given the centrality of this agreement to the April 12, 1999 agreement to split the fee among Grimaldi, Pinto and Ganim, the indictment is not facially flawed.

B. Racketeering Acts 3A and 4A

In Racketeering Acts 3 and 4, Ganim is alleged to have corruptly accepted cash, merchandise, meals, entertainment and other things of value from Grimaldi and Pinto in exchange for awarding municipal contracts to design and construct a baseball stadium and hockey arena. Paragraph 8(c) of the indictment contains a list of twenty-one items or services allegedly provided in this regard, including clothing, appliances and home furnishings, and legal and architectural services. The mailings that constitute the basis of these acts are two credit card statements (in the name of Joseph Kasper) (Racketeering Acts 3A and 4A) and two agreements between Harbor Communications and C.R. Klewin regarding the provision of marketing services with regard to the baseball stadium and hockey arena (Racketeering Acts 3B and 4B). Only the credit card statements are claimed by Ganim to be insufficiently in furtherance of the scheme.

Ganim, relying on *United States* v. *Maze,* 414 U.S.

395, 94 S.Ct. 645, 38 L.Ed.2d 603 (1974) and *Parr* v. *United States,* 363 U.S. 370, 80 S.Ct. 1171, 4 L.Ed.2d 1277 (1960), asserts that the credit card statements are not "in furtherance" of the alleged scheme because the routine mailing of credit card statements does not satisfy the mail fraud statute. Specifically, Ganim contends that the indictment fails to allege any direct connection between the mailings and the alleged schemes, and asserts that the alleged schemes did not depend on the mailings. The Government argues that at trial, the evidence will show that Grimaldi and Pinto paid for many of the meals, entertainment and gifts with their credit cards, and that they subsequently received statements from their credit card companies that were an essential and foreseeable part of this fraudulent scheme.

In *Maze,* the defendant stole his roommate's credit card and used it to pay for hotel rooms during a cross-country trip. The hotels delivered, by mail, the receipts to the card issuer, and the card issuer then mailed monthly statements to the roommate/victim. On this basis, Maze was charged with and convicted of mail fraud. The Supreme Court, affirming the Sixth Circuit's reversal of conviction, held that "the mailings here were directed to the end of adjusting accounts between the motel proprietor, the [card issuer], and [the roommate/victim], all of whom had to a greater or lesser degree been the victims of [Maze's] scheme." 414 U.S. at 402, 94 S.Ct. 645. The Supreme Court concluded that the mailings were thus not "in furtherance" of the scheme.

In *Parr,* the defendants misappropriated government funds by, *inter alia,* using a gasoline credit card issued to the school district to obtain products for

their own use. After furnishing products to the defendants, the oil company mailed an invoice to the school district for payment, and the district mailed a check in return. Relying on *Kann* v. *United States,* 323 U.S. 88, 65 S.Ct. 148, 89 L.Ed. 88 (1944), the Court reversed the mail fraud convictions stemming from this credit card use because the mailings in question were not sufficiently in furtherance of the scheme:

> [T]he scheme ... had reached fruition when [defendants] received the goods and services complained of. The persons intended to receive the goods and services had received them irrevocably. It was immaterial to them, or to any consummation of the scheme, how the oil company would collect from the District. It cannot be said that the mailings in question were for the purpose of executing the scheme, as the statute requires.

Parr, 363 U.S. at 393, 80 S.Ct. 1171 (*citing Kann,* 323 U.S. at 94, 65 S.Ct. 148) (alterations and quotations omitted).

The Government relies principally on two cases in support of its contention that the mailing of credit card statements that reflect charges made in furtherance of a scheme can constitute mail fraud: *United States* v. *Woodward,* 149 F.3d 46 (1st Cir.1998) and *United States* v. *Wallach,* 935 F.2d 445 (2d Cir.1991). In *Woodward,* a Massachusetts legislator was charged with mail fraud on the basis of credit card statements mailed to a lobbyist (Sawyer), as the credit card statements reflected charges made by Sawyer for illegal gratuities. The court held that the

monthly statements were in furtherance of the scheme:

> In the present case, the mailing in question was sent by Citibank Visa to Sawyer, billing him for charges arising from Sawyer's use of his Visa card to pay for illegal gratuities given to Woodward. According to Woodward, because the mailing took place some three to four weeks after Sawyer purchased the meals and entertainment for Woodward, the use of the mail was "a result of" the fraudulent scheme but not "for the purpose of executing" the scheme. We disagree.
>
> Woodward's argument focuses too narrowly, on each gratuity individually. His contention assumes a new fraudulent scheme began and ended every time Sawyer used his credit card to pick up the tab for Woodward. On the contrary, the evidence supported the conclusion that the fraudulent scheme in which Woodward and Sawyer participated was an ongoing scheme, lasting for years and involving Sawyer's use of his credit card. Every month, Visa would use the mails to bill Sawyer for his charges; if Sawyer did not pay those bills, his credit line would have been terminated and the gratuities could not have continued as Woodward and Sawyer expected. It was thus a necessary part of the ongoing scheme that Sawyer pay his

> bill after receiving it in the mail. This case is therefore distinguishable from *Maze* where the mailing involved only a post-fraud accounting among victims, after the defendant's fraudulent use of credit cards was already completed.

149 F.3d at 65 (citations and footnote omitted).

In *Wallach,* a defendant (Chinn) had a secret agreement with his employer whereby he was permitted to spend up to $100,000 annually on personal expenses using the company credit card. Chinn was charged with mail fraud based on the monthly mailing of credit card statements. The Second Circuit affirmed his conviction, noting the centrality of the credit cards to the scheme:

> [U]nder the government's theory the credit card billings were central to the scheme and essential to its continued success. This was not to be a "one shot" proposition. Rather, the intention of the scheme was to enhance Chinn's compensation by paying him periodically for personal expenses he incurred.... Therefore, unlike the situations in *Parr* and *Maze,* the credit card billings were not only anticipated by Chinn, but were also *essential to the success of the scheme....* Absent the regular credit card company mailings, Wedtech could not have treated these payments as reimbursements for business expenses and Chinn's ability to continue to receive the payments would have come to an end.

935 F.2d at 465 (emphasis added; internal citations omitted).

Parr, Maze, Woodward and *Wallach* demonstrate that the question of whether the subsequent mailing of a credit card statement reflecting illicit charges can be the basis of a mail fraud charge is a fact-based inquiry properly answered only after the Government's proof has been adduced. While Ganim contends that nothing about the credit card statements is essential to the alleged scheme, the indictment plainly alleges to the contrary. As the case law demonstrates, there are times when such statements are mailed in furtherance of a scheme (*e.g., Woodward* and *Wallach*) and times when they are not (*e.g., Parr* and *Maze*). The success or failure of the Government's evidence to show an actual nexus between the statements and the scheme will be determined at trial. A pretrial motion to dismiss is not the proper vehicle for testing the Government's proof on this issue.

C. Racketeering Act 5B

In Racketeering Act 5, Ganim is alleged to have fraudulently caused the expenditure of municipal funds to purchase a million dollar life insurance policy and thereafter "knowingly possessed and maintained" that policy until March 1, 2001, ¶ 76. Ganim allegedly directed Frank Sullivan, a financial consultant, to underwrite the policy, and the Bridgeport Director of Finance to issue a check to the insurance company. The mailings alleged to constitute mail fraud are a statement from the insurance company confirming payment of the premium, and a quarterly report issued by the insurance company.

Ganim challenges the second mailing (the quarterly report) as not in furtherance of the alleged scheme, asserting that the alleged fraud was complete when the city council authorized expenditure of the funds. Ganim argues that because the quarterly report was mailed a year after the expenditure was approved, it cannot be in furtherance of the alleged scheme. The Government claims that its evidence will show that the policy had not been paid in full, and that the quarterly reports summarized the financial information pertaining to the policy, including the amount of premiums paid as of the date of the report, in furtherance of the scheme. The adequacy of the Government's evidence will thus await determination at trial.

In short, because the indictment alleges that the scheme included the continued possession and maintenance of the policy, ¶ 76, and inasmuch as a statement showing the amount of premiums yet to be paid on a policy that was not yet paid in full could be proved to be in furtherance of a scheme to defraud the city into procuring the policy, Ganim's argument that the mailing of a quarterly report cannot be in furtherance of the scheme is unavailing at this stage.

V. RICO

In Count One, Ganim is charged with violating the section of RICO that provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly

> or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. § 1962(c).

The indictment alleges that Ganim, a "person," was associated with an enterprise consisting of himself, the Office of the Mayor, Pinto, Grimaldi and unnamed others, and that this group constituted "a group of individuals and entities associated in fact, the activities of which affected interstate commerce." ¶ 6. The indictment alleges that the enterprise was an ongoing organization functioning as a continuing unit for the purposes of achieving the objectives set out in the indictment, and that Ganim "participated in the operation and management of the enterprise, *inter alia,* by directing other members of the enterprise in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs." *Id.* The indictment sets out the objectives of the enterprise as "the personal, pecuniary and political benefit of members of and persons associated with the enterprise." ¶ 7. It then proceeds to allege eleven racketeering acts (also referred to as "predicate acts"), which are alleged to violate statutes listed in 18 U.S.C. § 1961(1), as the "manner and means of the enterprise." ¶ 8.

"In order to secure a conviction under RICO, the Government must prove *both* the existence of an 'enterprise' and the connected 'pattern of activity.'" *United States* v. *Turkette,* 452 U.S. 576, 583, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981) (emphasis added). "The enterprise is an entity, [while t]he pattern of

racketeering activity is ... a series of criminal acts as defined by the statute." *Id.* (*citing* 18 U.S.C. § 1961(1)). Here, the indictment has set out a distinct enterprise, which is alleged to have been an association in fact of Ganim, the Office of the Mayor, Pinto, Grimaldi and others, that had a hierarchy, ¶ 6 ("Defendant Ganim participated in the operation and *management* of the enterprise ...) (emphasis added), and that had an independent objective, ¶ 7. Next, the indictment has set out a pattern of racketeering activity that is composed of separate racketeering acts.

Relying on *United States* v. *McClendon,* 712 F.Supp. 723 (E.D.Ark.1988), Ganim argues that the indictment is defective "because it fails to allege an ongoing structure or hierarchy that is separate and distinct from the alleged racketeering acts." Mot. Dismiss at 14. In *McClendon,* the court dismissed an indictment that "allege[d] no purpose for the alleged enterprise other than carrying out the illegal scheme,"*id.* at 727, because the Government failed to allege that the enterprise "existed in order to maintain operations towards an economic goal separate from the commission of the alleged predicate acts making up the pattern or racketeering activity,"*id.* *McClendon* relies on *United States* v. *Anderson,* 626 F.2d 1358 (8th Cir.1980), and other Eighth Circuit cases reiterating this so-called "distinctness" requirement of a RICO enterprise. The Second Circuit, however, has squarely rejected this view. In *United States* v. *Mazzei,* 700 F.2d 85 (2d Cir.1983), it addressed and rejected by name the Eighth Circuit's holding in Anderson:

> The appellant correctly notes that the Eighth Circuit's position on "distinct-

> ness" is at issue with our analysis. *See United States* v. *Lemm,* 680 F.2d 1193, 1198-1201 (8th Cir.1982); *United States* v. *Bledsoe,* 674 F.2d 647 (8th Cir.1982); *United States* v. *Anderson,* 626 F.2d 1358 (8th Cir.1980).... We are not persuaded by that precedent, substantially for the reasons detailed in this opinion.

Id. at 89.

The case law thus makes clear that there is no distinctness requirement in this Circuit. While the Government must prove both an enterprise and a pattern of racketeering activity, "proof of these separate elements [need not] be distinct and independent, as long as the proof offered is sufficient to satisfy both elements." *Id.* Here, as set out above, the Government has alleged in the indictment that an enterprise existed and functioned, setting out the members, structure and goals of the enterprise. While Ganim asserts that there are "no allegations to establish that the alleged association-in-fact enterprise was anything more than a group of people who committed various predicate acts not always in concert and, on at least one occasion, to the financial detriment of at least one of the members of the alleged enterprise," Mot. Dismiss at 16, this argument ignores paragraphs six through eight of the indictment, which, as set out above, plainly allege more than the disconnected commission of unrelated predicate acts. While Ganim is free to argue after conclusion of the Government's case in chief that it has failed to prove the existence of an enterprise as required by the statute and interpretive case law, such arguments are premature as a basis for a motion to dismiss, which can

test only the legal sufficiency of the indictment rather than the sufficiency of its factual support.

VI. Constitutionality of 18 U.S.C. § 666

Three counts of the indictment charge Ganim with violating the federal-program bribery statute, 18 U.S.C. § 666, which provides in pertinent part:

> Whoever if the circumstance described in subsection (b) of this section exists --
>
> (1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof -- (A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that -- (i) is valued at $5,000 or more, and (ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or (B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more; or
>
> (2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State,

> local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of $5,000 or more; shall be fined under this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 666(a). The "circumstance" is that "the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance." 18 U.S.C. § 666(b).

In a supplement to his original motion to dismiss the indictment, Ganim expands upon an earlier argument and seeks the dismissal of those counts of the indictment alleging violations of this statute, arguing that the statute exceeds Congress's power under the Spending Clause[19] and is thus facially unconstitutional. He relies on *United States* v. *Morgan,* 230 F.3d 1067 (8th Cir.2000) (Bye, J., specially concurring), and *United States* v. *Sabri,* 183 F.Supp.2d 1145 (D.Minn.2002), both of which determined that § 666 was not a constitutional exercise of Congressional authority. Alternatively, he argues that these counts are factually defective because "there is no apparent connection between the alleged bribes and the integrity of any federal program because either (i) there

---

[19] U.S. Const. art. I, § 8, cl. 1. ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States ...").

were no federal funds involved or, (ii) to the extent limited federal money was involved, there was no nexus between the alleged bribes and the integrity of the program." Supp.Mem. [Doc. # 66] at 7 n. 2.

The Government notes that under the Second Circuit's limitation of the statute in *United States* v. *Santopietro,* 166 F.3d 88 (2d Cir.1999), the Government is required to prove "some connection between the bribe and a risk to the integrity of the federal[ly] funded program." *Id.* at 93. The Government also relies on *Salinas* v. *United States,* 522 U.S. 52, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997), in which the Supreme Court held that the statute was constitutionally applied to a sheriff who accorded preferential treatment to an inmate in a jail operated under a series of agreements with the federal government, because this treatment was "a threat to the integrity and proper operation of the federal program." *Id.* at 61, 118 S.Ct. 469. Since "[a] facial challenge ... must establish that no set of circumstances exists under which the Act would be valid[,]" *United States* v. *Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987), the Government posits that the Supreme Court's holding in *Salinas* forecloses any claim that the statute is unconstitutional on its face. Finally, the Government argues that at trial, it "is prepared to establish a connection between the transactions sought to be influenced and the city's receipt of federal funds," Govt's Opp. [Doc. # 67] at 6, and that dismissal of the § 666 counts is thus inappropriate at this stage.

The cases upon which Ganim relies are expressly critical of *Santopietro's* imposition of a nexus requirement between the bribery and a risk to the in-

tegrity of a federally-funded program, but *Santopietro* remains the controlling law in this Circuit. While Ganim argues that "[t]he respective courts in *Salinas* and *Santopietro* were not asked to address the facial constitutionality of § 666 [and neither case] contains any discussion regarding Congress' authority under the Spending Clause when enacting § 666," Mem.Supp. [Doc. # 66] at 7, he overlooks that Salinas explicitly held that "the application of § 666(a)(1)(B) to Salinas did not extend federal power beyond its proper bounds,"522 U.S. at 61, 118 S.Ct. 469, on which *Santopietro* relied in holding:

> The evidence also satisfies the requirement of *Foley,* undisturbed by *Salinas,* that the transaction sought to be influenced had some connection with a federal program. Indeed, *Salinas* may be read to indicate that the "threat to the integrity and proper operation of [a] federal program" created by the corrupt activity is necessary to assure that the statute is not unconstitutionally applied.

166 F.3d at 93 (*citing United States* v. *Foley,* 73 F.3d 484, 493 (2d Cir.1996) and *Salinas,* 522 U.S. at 60-61, 118 S.Ct. 469). Defendant's argument that § 666 is facially unconstitutional is belied by controlling authority in this Circuit, and is therefore rejected.

Defendant's alternative claim that "there is no apparent connection" between the bribes and the integrity of the federally-funded programs must be rejected at this stage, as the indictment's allegations are adequate. In *Santopietro,* the court found the fol-

lowing allegations in the indictment to suffice:

> [C]orrupt payments were made by real estate developers to secure the use of the appellants' influence with city agencies "including the City Plan Commission, the Zoning Commission, the Water Department, and the Fire Marshal," Indictment P 21, and the use of their influence to further the interests of the developers "in the appointments of members and chairpersons of land use boards and relevant committees and agencies in the City of Waterbury,"*id.* P 25. During the relevant periods, substantial federal funds were received by Waterbury for housing, urban development, and other programs within the purview of these agencies and officials. Since federal funds were received by Waterbury for housing and urban development programs and the corrupt payments concerned real estate transactions within the purview of the agencies administering federal funds, the requisite connection between the bribes and the integrity of federally funded programs is satisfied.

166 F.3d at 93. Here, the indictment alleges that Bridgeport received federal funds "administered, *inter alia*, by the Office of Planning and Economic Development, the Office of Public Facilities and the Bridgeport Water Pollution Control Authority ("WPCA")." ¶ 1. The indictment alleges that Ganim "us[ed] his influence with city agencies, including ...

the Office of Planning and Economic Development, the Office of Public Facilities and the WPCA for the benefit of' the individuals and corporations who allegedly bribed him. ¶ 7. Inasmuch as "the sufficiency of the evidence is not appropriately addressed on a pretrial motion to dismiss an indictment," *United States* v. *Alfonso,* 143 F.3d 772, 776-777 (2d Cir.1998),. evaluation of the sufficiency of the Government's proof on connectedness must await trial.

VII. Conclusion

For the reasons set out above, the Court's ruling [Doc. # 39] denying Ganim's motion [Doc. # 26] for a bill of particulars is VACATED, and upon reconsideration the motion is GRANTED as to ¶¶ 8(a) -(c) of the motion, with the requested information to be provided as to each benefit (whether actual or constructive) that Ganim is alleged to have received, solicited or otherwise procured or attempted to procure in connection with the pending charges. The bill of particulars motion is denied in all other respects. Ganim's motion to dismiss the indictment [Doc. # 50] is DENIED.

IT IS SO ORDERED.

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE, NEW YORK, N.Y. 10007

Catherine O'Hagan Wolfe
CLERK OF COURT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 4th day of March, Two Thousand and Eight,

UNITED STATES
COURT OF APPEALS
FILED
Mar 04 2008
Catherine O'Hagan
Wolfe Clerk
SECOND CIRCUIT

United States Of America,

Appellee,

ORDER
No. 03-1448-cr

v.

Joseph P. Ganim,

Defendant-Appellant.

Appellant Joseph P. Ganim, having filed a petition for panel rehearing, or, in the alternative, for rehear-

ing *en banc*, and the panel that determined the appeal having considered the request for panel rehearing, and the active members of the Court having considered the request for rehearing *en banc*,

IT IS HEREBY ORDERED that the petition is denied.

For the Court:
Catherine O'Hagan Wolfe, Clerk

By: s/
Frank Perez, Deputy Clerk

APPENDIX F

United States District Court
District of Connecticut

UNITED STATES	:	
	:	Criminal No.
v.	:	3:01CR263 JBA
	:	
Joseph P. GANIM	:	

AMENDMENT TO JUDGMENT

It is hereby Ordered that the Judgment and Order of Commitment entered by the Court in the above-entitled case on July 3, 2003, be amended as follows:

The Court recommends that the defendant be designated to a Federal Prison Camp with the following order of priority: Otisville, Devens, Fort Dix, Allenwood, and either Pensacola or Elgin.

In all other respects the Judgement [*sic*] and Order of Commitment entered by this Court on July 3, 2003 remains in effect.

Dated at New Haven, Connecticut this 14th day of July 2003.

IT IS SO ORDERED
s/
Janet Bond Arterton
United States District Judge

APPENDIX G

United States District Court
District of Connecticut

UNITED STATES	:	
	:	Criminal No.
v.	:	3:01CR263 JBA
	:	
Joseph P. GANIM	:	FILED Jul 11 11:40 am '03 U.S. District Court New Haven, Conn.

PRELIMINARY ORDER OF FORFEITURE

As a result of the guilty verdict on Counts One and Two, and a stipulation by the parties that the government has proven, by a preponderance of evidence, that $175,000 in United States Currency was illegal proceeds as set forth in Count 24, pursuant to 18 U.S.C. § 1963(a)(3) and 1963(m), the defendant, Joseph P. Ganim shall forfeit to the United States $175,000 in United States Currency.

Accordingly, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the property identified as $175,000 in United States Currency is FORFEITED to the United States in accordance with 18 U.S.C. § 1963.

ORDERED that the United States Attorney General or his authorized designee shall seize said property and hold it in his custody pursuant to 18 U.S.C. § 1963(g) and Fed. R. Crim. P. 32(d)(2).

ORDERED that the United States shall publish notice of this Order pursuant to 18 U.S.C. § 1963(l)(1).

ORDERED that this Court will conduct further proceeding pursuant to 18 U.S.C. § 1963(l), and

ORDERED that, upon adjudication of all third party interests pursuant to 18 U.S.C. § 1963(l), this Court will enter a Final Order of Forfeiture.

SO ORDERED this 11th date of July, 2003 at New Haven, Connecticut.

s/

HONORABLE JANET BOND ARTERTON
UNITED STATES DISTRICT JUDGE

APPENDIX H

United States District Court
District of Connecticut

UNITED STATES	:	
	:	Criminal No.
v.	:	3:01CR263 JBA
	:	
Joseph P. GANIM	:	

AMENDMENT TO JUDGMENT

It is hereby Ordered that the Judgment and Order of Commitment entered by the Court in the above-entitled case on July 3, 2003, be amended as follows:

The defendant shall be on supervised release for a term of Three (3) years on Counts 1 thru 8, 13, 14, 16, 17, 19, & 20 and One (1) year on Counts 22 & 23 to run concurrently. Defendant shall pay a Special Assessment of $1,600.00, on Counts 1-8, 13, 14, 16, 17, 19, 20, 22, & 23 of the Superseding Indictment which shall be due immediately. Counts 18 and 21 of the Superseding Indictment were dismissed by Order of the Court.

In all other respects the Judgement [*sic*] and Order of Commitment entered by this Court on July 3, 2003 remains in effect.

Dated at New Haven, Connecticut this 7th Day of July 2003.

IT IS SO ORDERED

s/

Janet Bond Arterton
United States District Judge

APPENDIX I

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUDGMENT IN A CRIMINAL CASE

UNITED STATES OF AMERICA v.	CASE NO. 3:01CR263 JBA
JOSEPH P. GANIM 45 SAILORS LANE BRIDGEPORT, CT 06605	RONALD S. APTER, AUSA MICHAEL R. SKLAIRE, AUSA
SSN: 046-54-8155 DOB: 10/21/59	RICHARD T. MEEHAN, Defendant's Attorney

The defendant was found guilty after a jury trial on counts **1 thru 8, 13, 14, 16, 17, 19, 20, 22 & 23 of the Superseding Indictment**. Accordingly, the defendant is adjudged guilty of counts **1 thru 8, 13, 14, 16, 17, 19, 20, 22 & 23 of the Superseding Indictment** which involve the following offenses:

Count 1 Title and Section: 18 U.S.C. 1962© [*sic*]
Nature of Offense: RACKETEERING (RICO)

Count 2 Title and Section: 18 U.S.C. 1962(d)
Nature of Offense: RACKETEERING CONSPIRACY

Count 3 Title and Section: 18 U.S.C. 951
Nature of Offense: HOBBS ACT EXTORTION

Counts 4, 5, 6, 8, 13, 14, 17, 19 Title and Section: 18 U.S.C. 1341
Nature of Offense: MAIL FRAUD

Count 7 Title and Section: 18 U.S.C. 666(a)(1)(B)
Nature of Offense: BRIBERY
Counts 16 & 20: Title and Section: 18 U.S.C. 371
Nature of Offense: CONSPIRACY TO COMMIT BRIBERY
Counts 22 & 23: Title and Section: 18 U.S.C. 7206(1)
Nature of Offense: FALSE TAX RETURNS
Date Offense Concluded: **11/1/00**
The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant is hereby committed to the custody of the United Status Attorney General or his duly authorized representative to be imprisoned for a term of: **108 months on Counts 1, 2, 3 & 7 and 60 months on Counts 4, 5, 6, 8, 13, 14, 16, 17, 19 & 29 and ONE (1) year on Counts 22 & 23 to run concurrently.**

Special Conditions of Supervised Release include: **Defendant is jontly and severally liable with Paul Pinto, Leonard Grimaldi and Alfred Lenoci, Jr. to pay restitution of $136,000.00 to Bridgeport Energy. Defendant shall pay restitution in the amount of $12,617.00 to the City of Bridgeport, Connecticut for a total restitution of $148,617.00 payable at a rate of $1,500.00 per month. Defendant shall pay a fine of $150,000.00 payable immediately and at the rate of $1,500.00 a month after release, on any remaining balance. Interest is waived. Defendant shall provide all requested financial documentation, or execute appropriate authorizations for United States Probation Office (USPO), including federal & state income tax returns.**

The defendant shall voluntarily surrender on **SEPTEMBER 16, 2003 by 12 noon** to the U.S. Marshall for this district, or at such other time and place as designated by the Bureau of Prisons. **The Court recommends that the defendant be designated to a Federal Prison Camp with the following order or priority: Otisville, Devens, Fort Dix, and either Pensacola or Elgin.**

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. In addition to the special conditions of supervised release imposed above, it is hereby ordered that the conditions of supervised release set out on the reverse side are imposed.

Counts **9, 10, 11, 12 & 15** of the Superseding Indictment are dismissed on motion of government. Counts **18** and **21** of the Superceding Indictment were dismissed by Order of the Court.

It is ordered that the defendant shall pay a Special Assessment of **$1,600.00**, for counts 1-8, 13, 14, 16, 17, 18, 20, 22, 23 of the Superceding Indictment which shall be due immediately.

CERTIFIED AS A TRUE COPY
ON THIS DATE 7/18/03
Kevin F. Rowe, Clerk
BY s/
Deputy Clerk

July 1, 2003
Date of Imposition of Sentence
s/
Janet Bond Arterton,

United States
District Judge
Date: July 3, 2003

CONDITIONS OF SUPERVISED RELEASE

In addition to the Standard Conditions listed below, the following indicated (■) Mandatory Conditions are Imposed:

■ (1) The defendant shall not commit another federal, state, or local offense;
☐ (2) The defendant shall not unlawfully possess a controlled substance;
☐ (3) The defendant who is convicted for a domestic violence crime as defined in 18 U.S.C. section 3561(b) for the first time shall attend a public, private, or private non-profit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is available within a 50-mile radius of the legal residence of the defendant;
☐ (4) The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter for use of a controlled substance;
■ (5) If a fine is Imposed and has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine;
■ (6) The defendant shall (A) make restitution in accordance with 18 U.S.C. sections 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and (B)

pay the assessment imposed in accordance with 18 U.S.C. section 3013;

☐ (7) A defendant convicted of a sexual offense as described in 18 U.S.C. sections 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation or is a student.

☐ (8) The defendant cooperate in the collection of a DNA sample from the defendant.

While on supervised release, the defendant shall also comply with all of the following Standard Conditions:

STANDARD CONDITIONS

(1) The defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer;

(2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

(3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

(4) The defendant shall support the defendant's dependents and meet other family responsibilities (including, but not limited to, complying with the terms of any court order or administrative process pursuant to the law of a state, the District of Columbia, or child or of a child and the parent with whom the child is living);

(5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

(6) The defendant shall notify the probation officer at least ten days prior to any change of residence or employment;

(7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substance, except as prescribed by a physician;

(8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court;

(9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

(10) The defendant shall permit a probation officer to visit the defendant at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

(11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

(12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

(13) The defendant shall pay the special assessment imposed or adhere to a court-ordered in-

stallment schedule for the payment of the special assessment;

(14) The defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay an unpaid amount of restitution, fines, or special assessments.

The defendant shall also report to the Probation Office in the district to which the defendant is released within 72 hours of release from the custody of the U.S. Bureau of Prisons.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____

John R. O'Connor
United States Marshall

By: _____
Deputy Marshall

APPENDIX J

United States District Court
District of Connecticut

UNITED STATES	:	
	:	Criminal No.
v.	:	3:01CR263(JBA)
	:	
Joseph P. GANIM	:	December 4, 2002

SUPPLEMENTAL BILL OF PARTICULARS

Pursuant to the Court's November 20, 2002 Order, the governments hereby submits the attached supplemental bill of particulars setting forth the benefits that the defendant, Joseph P. Ganim, is alleged to have corruptly solicited and received, and the act(s) or racketeering and count(s) of the indictment with which said items were connected. As more fully described in the government's Evidentiary Notice, filed this date, the supplemental bill of particulars includes three additional items that were inadvertently omitted from the original bill of particulars.

Respectfully submitted,

KEVIN J. O'CONNOR
UNITED STATES ATTORNEY

s/
RONALD S. APTER
SUPERVISORY ASSISTANT
UNITED STATES ATTORNEY
450 Main Street
Hartford, CT 06103
Telephone No. (860) 947-1101

Federal Bar No. CT05038

s/
MICHAEL R. SKLAIRE
ASSISTANT UNITED STATES
ATTORNEY
157 Church Street
New Haven, CT 06510
Telephone No. (203) 821-3700
Federal Bar No. CT19503

BENEFITS CORRUPTLY SOLICITED AND RECEIVED BY JOSEPH P. GANIM

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
			1995	
10/95	LG/PP[1]	$5,000	Cash	Counts 1 (enterprise) and 2
10/1/95	LG	$1,000	Personal check	Counts 1 (enterprise) and 2
10/21/95	LG	$3,000	Personal check	Counts 1 (enterprise) and 2
7/95-12/95	LG	$10,875	Legal Fees	Counts 1 (enterprise) and 2
3/95-12/95	LG/PP	$1,046[2]	Meals/entertainment	Counts 1 (enterprise) and 2

103a

---

1 The following names have been abbreviated: Joseph Ganim (JG), Leonard Grimaldi (LG), Paul Pinto (PP), Joseph Kasper (JK), Brian Bannon (BB), ALfred Lenoci Jr. (AL), Frank Sullivan (FS).

2 Includes expenses incurred by PP and LG for JG and others present during particular meals and events. Figure does not include additional expenses paid in cash.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
			1996	
1/96	PP/JK	$1,700	Payment re: custom-made two-piece men's suit	Counts 1 (enterprise) and 2
7/2/96	LG	$766	Payment re: custom-made, monogrammed men's dress shirts	Counts 1 (enterprise) and 2-6; RA1
1/96-12/96	LG/PP	$2,658[2]	Meals/entertainment	Counts 1 (enterprise) and 2-6; RA1
			1997	
4/19/97	LG	$2,600	Payment re: men's suits	Counts 1 (enterprise), 2 and 9-10; RA3
4/26/97	LG	$452	Payment re: custom-made monogrammed men's dress shirts	Counts 1 (enterprise), 2 and 9-10; RA3

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
1/97-12/97	LG/PP	$12,493[2]	Meals/entertainment	Counts 1 (enterprise), 2-6 and 9-10; RA1, RA3
			1998	
4/98	PP/JK	$20,000	Cash	Counts 1 (enterprise), 2, 17-18 and 22; RA8
5/13/98	PP	$818[3]	Payment re: dehumidifier, range and refrigerator for 51 Mountford St.	Counts 1 (enterprise), 2, 17-18 and 22; RA8
5/19/98	PP	$1,590	Cash re: purchase of diamond earrings	Counts 1 (enterprise), 2, 17-18 and 22; RA8
5/30/98	PP/BB	$706[3]	Asbestos abatement for 51 Mountford St.	Counts 1 (enterprise), 2 and 22

---

3 Represents one-half of payments for goods and services to reflect JG fifty percent ownership interest in the property.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
6/8/98	PP	$1,625[3]	Payment re: renovation of 51 Mountford St.	Counts 1 (enterprise), 2, 17-18 and 22; RA8
6/15/98	PP	$1,250[3]	Payment re: renovation of 51 Mountford St	Counts 1 (enterprise), 2, 17-18 and 22; RA8
7/9/98	PP	$412[3]	Payment re: washer and dryer for 51 Mountford St.	Counts 1 (enterprise), 2, 17-18 and 22; RA8
8/20/98	AL	$3,000	Payment re: excavation of 45 Sailors Lane	Counts 1 (enterprise), 2, 17 and 22; RA8
8/27/98	AL	$1,750	Payment re: removal of construction debris at 45 Sailors Lane	Counts 1 (enterprise), 2, 17 and 22; RA8

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
9/2/98	PP	$648	Payment re: custom-made monogrammed men's dress shirts	Counts 1 (enterprise), 2, 17-18 and 22; RA8
10/9/98	LG	$2,438[4]	Wine	Counts 1 (enterprise), 2, 17-18 and 22; RA8
12/21/98	AL	$4,000	Payment re: construction of chimney for 45 Sailors Lane	Counts 1 (enterprise), 2, 17 and 22; RA8
12/98	LG	$3,000	Cash	Counts 1 (enterprise), 2, 17-18 and 22; RA8
12/23/98	LG/PP	$1,955	Payment re: personal fitness center	Counts 1 (enterprise), 2, 17-18 and 22; RA8

[4] Represents JG one-third share of wine purchased.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
12/24/98	PP	$1,500	Cash re: purchase of designer jacket, sweaters, dress shirts	Counts 1 (enterprise), 2, 17-18 and 22; RA8
5/98-12/98	PP	$20,179[5]	Kasper Group architectural and engineering services re: 45 Sailors Lane	Counts 1 (enterprise), 2, 9-10, 17-18 and 22; RA3, RA8
9/98-12/98	LG	$3,750	Cash paid to Jennifer Ganim	Counts 1 (enterprise), 2, 18 and 22; RA8
1/98-12/98	LG/PP	$13,278[2]	Meals/entertainment	Counts 1 (enterprise), 2, 9-10, 17-18 and 22; RA3, RA8

1999

[5] Represents net value of services rendered by Kasper Group, less $2,900 payment by JG.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
2/15/99	PP	$1,500	Cash re: down payment for refrigerator range, microwave and dish-washer for 45 Sailors Lane	Counts 1 (enterprise), 2, 11-12 and 23; RA4
3/4/99	PP	$2,945	Cash re: balance owed for purchase of appliances for 45 Sailors Lane	Counts 1 (enterprise), 2, 11-12 and 23; RA4
4/99	PP	$5,000	Payment re: construction of 45 Sailors Lane	Counts 1 (enterprise), 2, 11-12 and 23; RA4
4/6/99	AL	$450	Payment re: removal of construction debris at 45 Sailors Lane	Counts 1 (enterprise), 2, 17, 20 and 23; RA8, RA10
4/10/99	PP	$3,200	Cash re: purchase of lumber for construction of 45 Sailors Lane	Counts 1 (enterprise), 2, 11-12 and 23; RA4

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
4/10/99	PP	$2,176	Cash re: purchase of money orders payable to JG's First USA and Citi-bank credit cards	Counts 1 (enterprise), 2, 11-12 and 23; RA4
5/99	PP	$5,000	Payment re: kitchen cabinets for 45 Sailors Lane	Counts 1 (enterprise), 2, 11-12 and 23; RA4
5/99	PP	$5,000	Payment re: stone walk-ways for 45 Sailors Lane	Counts 1 (enterprise), 2, 11-12 and 23; RA4
5/99	PP	$3,200	Payment re: installation of underground sprinkler system for 45 Sailors Lane	Counts 1 (enterprise), 2, 11-12 and 23; RA4

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
5/99	PP/FS	$2,500	Kickback re: life insurance commission, of which $1,000 deposited into JG education IRA account	Counts 1 (enterprise), 2, 13, 15 and 23; RA5, RA6
5/8/99	PP	$442	Cash re: purchase of clothing and gear	Counts 1 (enterprise), 2, 11-12 and 23; RA4
5/13/99	PP	$2,100	Payment re: installation of wood floors for 45 Sailors Lane	Counts 1 (enterprise), 2, 11-12 and 23; RA4
5/28/99	City of Bridgeport	$14,759[6]	Sanitary sewer system for 45 Sailors Lane	Counts 1 (enterprise), 2, 21 and 23: RA11
6/99	PP	$837	Cash re: purchase of designer clothing	Counts 1 (enterprise), 2, 11-12, and 15; RA4, RA6

---

6 Represents amount of unpaid assessment for installation of sewer system for 45 Sailors Lane.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
7/99	LG	$3,000	Cash	Counts 1 (enterprise), 2, 7,11-12 and 23; RA2, RA4
7/99	PP	$4,500	Cash re: purchase of money orders	Counts 1 (enterprise), 2, 7,11-12 and 23; RA2, RA4
7/22/99	PP	$8,428[7]	Wine	Counts 1 (enterprise), 2, 7,11-12 and 23; RA2, RA4
8/21/99	PP	$2,500	Bank check	Counts 1 (enterprise), 2, 7,11-12 and 23; RA2, RA4
8/99	LG	$1,000	Cash	Counts 1 (enterprise), 2, 7,11-12 and 23; RA2, RA4
11/99	PP	$4,000	Cash	Counts 1 (enterprise), 2, 7,11-12 and 23; RA2, RA4

---

7 Represents JG one-half share of wine purchased.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
11/5/99	PP	$4,560	Payment re: legal fees for Fairfield Beach zoning appeal	Counts 1 (enterprise), 2, 7,11-12 and 23; RA2, RA4
11/11/99	AL	$500	Payment re: chimney repair for 45 Sailors Lane	Counts 1 (enterprise), 2, 20 and 23; RA10
12/22/99	PP	$300	Payment re: appraisal for 637 Main Street, Monroe	Counts 1 (enterprise), 2, 7,11-12 and 23; RA2, RA4
1/99-12/99	LG	$3,750	Cash paid to Jennifer Ganim	Counts 1 (enterprise), 2, 7,11-12 and 23; RA2, RA4
2/99-11-99	PP	$50,000	Split of juvenile detention center consulting fees	Counts 1 (enterprise), 2, 19 and 23: RA9
5/99-12/99	City of Bridgeport	$4,588[8]	Life insurance policy	Counts 1 (enterprise), 2 and 13; RA5

[8] Represents annualized unrefunded amount of premium paid for JG $1 million life insurance policy.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
6/99-11/99	LG/PP	$182,884[9]	Split of PSG and other consulting fees	Counts 1 (enterprise), 2, 7, 11-12 and 23; RA2, RA4
1/99-12/99	PP	$14,025[2]	Meals/entertainment	Counts 1 (enterprise), 2, 7, 11-12, 16, 19, 20 and 23; RA2, RA4, RA7, RA9, RA10
			2000	
4/00	PP	$1,000	Cash	Counts 1 (enterprise), 2, 7 and 16; RA2, RA7
6/00	PP	$9,366	Fifty percent interest in LLC	Counts 1 (enterprise) and 2

---

9 Represents JG one-third share of LG/PP consulting fees. Funds deposited into PP bank account.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
6/2/00	PP	$507	Payment re: purchase of bedroom furniture for 949-53 Fairfield Beach Rd.	Counts 1 (enterprise), 2, 7,11-12; RA2, RA4
6/6/00	PP	$765	Payment re: carpentry and sheetrocking of 949-53 Fairfield Beach Rd.	Counts 1 (enterprise), 2, 7 and 11-12; RA2, RA4
6/12/00	PP	$1,431	Payment re: landscaping and cleaning of 949-53 Fairfield Beach Rd.	Counts 1 (enterprise), 2, 7 and 11-12; RA2, RA4
1/00-8/00	PP	$21,052[10]	Kasper Group architectural and engineering services re: 637 Main Street, Monroe	Counts 1 (enterprise), 2, 7 and 11-12; RA2, RA4

[10] Represents net value of services rendered by Kasper Group, less $750 payment by JG.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT	COUNT/RACKETEERING ACT ("RA")
1/00-12/00	City of Bridgeport	$6,882[8]	Life insurance policy	Counts 1 (enterprise), 2, and 14; RA5
2/00-7/00	PP	$68,413[11]	Split of PP consulting fees	Counts 1 (enterprise) and 2
1/00-12/00	PP	$8,257[2]	Meals/entertainment	Counts 1 (enterprise), 2, 16 and 20; RA7, RA10
			2001	
1/01-2/01	City of Bridgeport	$1,147[8]	Life insurance policy	Counts 1 (enterprise) and 2; RA5

[11] Represents JG one-half share of PP consulting fees. Funds deposited into PP bank account.

APPENDIX K

United States District Court
District of Connecticut

UNITED STATES	:	
	:	Criminal No.
v.	:	3:01CR263(JBA)
	:	
Joseph P. GANIM	:	September 27, 2002

BILL OF PARTICULARS

Pursuant to the Court's September 12, 2002 Ruling on the Motion to Dismiss the Indictment, the governments submits the attached bill of particulars setting forth the specific benefits that are alleged to have been corruptly solicited and received by or on behalf of the defendant, Joseph P. Ganim, the person(s) who provided the benefits, and the approximate date on which the benefits were conferred. The government has provided the defendant with all of the underlying documents upon which the bill of particulars is based.

Respectfully submitted,

JOHN A. DANAHER III
UNITED STATES ATTORNEY

s/
RONALD S. APTER
SUPERVISORY ASSISTANT
UNITED STATES ATTORNEY
450 Main Street
Hartford, CT 06103
Telephone No. (860) 947-1101

Federal Bar No. CT05038

s/
MICHAEL R. SKLAIRE
ASSISTANT UNITED STATES ATTORNEY
157 Church Street
New Haven, CT 06510
Telephone No. (203) 821-3700
Federal Bar No. CT19503

BENEFITS CORRUPTLY SOLICITED AND RECEIVED BY JOSEPH P. GANIM

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT
		1995	
10/95	LF/PP[1]	$5,000	Cash
10/1/95	LG	$1,000	Personal check
10/21/95	LG	$3,000	Personal check
3/95-12/95	LG/PP	$1,046[2]	Meals/entertainment
		1996	
1/96	PP/JK	$1,700	Payment re: custom-made two-piece men's suit

---

1 The following names have been abbreviated: Joseph Ganim (JG), Leonard Grimaldi (LG), Paul Pinto (PP), Joseph Kasper (JK), Brian Bannon (BB), ALfred Lenoci Jr. (AL), Frank Sullivan (FS).

2 Includes expenses incurred by PP and LG for JG and others present during particular meals and events.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT
7/2/96	LG	$766	Payment re: custom-made, monogrammed men's dress shirts
1/96-12/96	LG/PP	$2,658[2]	Meals/entertainment
		1997	
4/19/97	LG	$2,600	Payment re: men's suits
4/ /97	LG	$452	Payment re: custom-made monogrammed men's dress shirts
1/97-12/97	LG/PP	$12,493[2]	Meals/entertainment
		1998	
5/13/98	PP	$818[3]	Payment re: dehumidifier, range and refrigerator for 51 Mountford St.
5/19/98	PP	$1,590	Cash re: purchase of diamond earrings

[3] Represents one-half of payments for goods and services to reflect JG fifty percent ownership interest in the property.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT
5/30/98	PP/BB	$706[3]	Asbestos abatement for 51 Mountford St.
6/8/98	PP	$1,625[3]	Payment re: renovation of 51 Mountford St.
6/15/98	PP	$1,250[3]	Payment re: renovation of 51 Mountford St.
7/9/98	PP	$412[3]	Payment re: washer and dryer for 51 Mountford St.
8/20/98	AL	$3,000	Payment re: excavation of 45 Sailors Lane
8/27/98	AL	$1,750	Payment re: removal of construction debris at 45 Sailors Lane
9/2/98	PP	$648	Payment re: custom-made monogrammed men's dress shirts

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT
10/9/98	LG	$2,438[4]	Wine
12/21/98	AL	$4,000	Payment re: construction of chimney for 45 Sailors Lane
12/98	LG	$3,000	Cash
12/23/98	LG/PP	$1,955	Payment re: personal fitness center
12/24/98	PP	$1,500	Cash re: purchase of designer jacket, sweaters, dress shirts
5/98-12/98	PP	$20,179[5]	Kasper Group architectural and engineering services re: 45 Sailors Lane
9/98-12/98	LG	$3,750	Cash paid to Jennifer Ganim
1/98-12/98	LG/PP	$13,278[2]	Meals/entertainment

1999

---

4 Represents JG one-third share of wine purchased.

5 Represents net value of services rendered by Kasper Group, less $2,900 payment by JG.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT
2/15/99	PP	$1,500	Cash re: down payment for refrigerator range, microwave and dishwasher for 45 Sailors Lane
3/4/99	PP	$2,945	Cash re: balance owed for purchase of appliances for 45 Sailors Lane
4/99	PP	$5,000	Payment re: construction of 45 Sailors Lane
4/6/99	AL	$450	Payment re: removal of construction debris at 45 Sailors Lane
4/10/99	PP	$3,200	Cash re: purchase of lumber for construction of 45 Sailors Lane
4/10/99	PP	$2,176	Cash re: purchase of money orders payable to JG's First USA and Citibank credit cards
5/99	PP	$5,000	Payment re: kitchen cabinets for 45 Sailors Lane

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT
5/99	PP	$5,000	Payment re: stone walkways for 45 Sailors Lane
5/99	PP	$3,200	Payment re: installation of underground sprinkler system for 45 Sailors Lane
5/99	PP/FS	$2,500	Kickback re: life insurance commission, of which $1,000 deposited into JG education IRA account
5/8/99	PP	$442	Cash re: purchase of clothing and gear
5/13/99	PP	$2,100	Payment re: installation of wood floors for 45 Sailors Lane
5/28/99	City of Bridgeport	$14,759[6]	Sanitary sewer system for 45 Sailors Lane
6/99	PP	$837	Cash re: purchase of designer clothing

[6] Represents amount of unpaid assessment for installation of sewer system for 45 Sailors Lane.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT
7/99	LG	$3,000	Cash
7/22/99	PP	$8,428[7]	Wine
8/21/99	PP	$2,500	Bank check
8/99	LG	$1,000	Cash
11/99	PP	$4,000	Cash
11/5/99	PP	$4,560	Payment re: legal fees for Fairfield Beach zoning appeal
11/11/99	AL	$500	Payment re: chimney repair for 45 Sailors Lane
12/22/99	PP	$300	Payment re: appraisal for 637 Main Street, Monroe
1/99-12/99	LG	$3,750	Cash paid to Jennifer Ganim

[7] Represents JG one-half share of wine purchased.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT
2/99-11-99	PP	$50,000	Split of juvenile detention center consulting fees
5/99-12/99	City of Bridgeport	$4,588[8]	Life insurance policy
6/99-11/99	LG/PP	$182,884[9]	Split of PSG and other consulting fees
1/99-12/99	PP	$14,025[2]	Meals/entertainment
		2000	
4/00	PP	$1,000	Cash
6/00	PP	$9,366	Fifty percent interest in LLC.
6/2/00	PP	$507	Payment re: purchase of bedroom furniture for 949-53 Fairfield Beach Rd.

---

8 Represents annualized unrefunded amount of premium paid for JG $1 million life insurance policy.

9 Represents JG one-third share of LG/PP consulting fees. Funds deposited into PP bank account.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT
6/6/00	PP	$765	Payment re: carpentry and sheetrocking of 949-53 Fairfield Beach Rd.
6/12/00	PP	$1,431	Payment re: landscaping and cleaning of 949-53 Fairfield Beach Rd.
1/00-8/00	PP	$21,052[10]	Kasper Group architectural and engineering services re: 949-53 Fairfield Beach Rd.
1/00-7/00	PP	$9,312	Kasper Group architectural and engineering services re: 637 Main Street, Monroe
1/00-12/00	City of Bridgeport	$6,882[8]	Life insurance policy
2/00-7/00	PP	$68,413[11]	Split of PP consulting fees

[10] Represents net value of services rendered by Kasper Group, less $750 payment by JG.

[11] Represents JG one-half share of PP consulting fees. Funds deposited into PP bank account.

DATE	PAYOR	AMOUNT	BENEFIT/METHOD OF PAYMENT
1/00-12/00	PP	$8,257[2]	Meals/entertainment
		2001	
1/01-2/01	City of Bridge-port	$1,147[8]	Life insurance policy

APPENDIX L

RELEVANT STATUTORY PROVISIONS

18 U.S.C. § 201: Bribery of Public Officials and Witnesses

(a) For the purpose of this section--

(1) the term "public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term "person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever--

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a

public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent--

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom;

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(c) Whoever--

(1) otherwise than as provided by law for the proper discharge of official duty--

(A) directly or indirectly gives, offers, or promises anything of value to any public official,

former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;

(2) directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding, or for or because of such person's absence therefrom;

shall be fined under this title or imprisoned for not more than two years, or both.

18 U.S.C. § 666(a)(1)(B): Theft Or Bribery Concerning Programs Receiving Federal Funds

(a) Whoever, if the circumstance described in subsection (b) of this section exists--

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof--

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that--

(i) is valued at $5,000 or more, and

(ii) is owned by, or is under the care, custody, or control of such organization, government, or agency; or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more; or

(2) corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions

of such organization, government, or agency involving anything of value of $5,000 or more;

shall be fined under this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 1341: Frauds and Swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 1346: Definition Of "Scheme Or Artifice To Defraud"

For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

18 U.S.C. § 1951: Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section--

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any

point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

18 U.S.C. § 1962: Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

Conn. Gen. Stat. § 53a-148(a): Bribe receiving: Class C felony

(a) A public servant or a person selected to be a public servant is guilty of bribe receiving if he solicits, accepts or agrees to accept from another person any benefit for, because of, or as consideration for his decision, opinion, recommendation or vote.

(b) Bribe receiving is a class C felony.

APPENDIX M

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
vs.	)	Case No.
	)	CR94-657(A)CBM
WALTER TUCKER, III,	)	
	)	
Defendant.	)	VOLUME XXXV

Filed
Clerk, U.S. District Court
JAN 30 1997
Central District of
California
by Deputy
[96-50321]

TRANSCRIPT OF TRIAL
Held in Los Angeles, California
November 17, 1995

BEFORE THE HONORABLE
CONSUELO B. MARSHALL

Echo Reporting, Inc.
225 Broadway, Suite 350
San Diego, California 92101
(619) 238-5173

[Transcript at 129:23-131:23]

[Tr. Page 129:23]

The Defendant is charged in counts 1 through 10 of the indictment with attempted extortion under color of official right in violation of the Hobbs Act, Section 1951 [Tr. Page 130] of Title 18 of the United States Code. In order for the Defendant to be found guilty of those charges, the Government must prove each of the following elements beyond a reasonable doubt.

First, the Defendant was an elected official in Compton, California.

Two, second, the Defendant obtained or intended to obtain money that he knew he was not entitled to.

Third, Defendant knew that the money was given or would be given in return for taking some official action with all of you agreeing on a particular official action in exchange for which money was given or would be given.

This element tells you, and one of the counsel mentioned it, or maybe both in their closing remarks, you all must agree on what the official action was; in other words, it would be improper if some of you agreed the official action was one thing, and some of you agreed the official action was a different act. You all must agree on the same act or acts that you believe constitute the official action.

Fourth, the commerce or the movement of an article or a commodity in commerce from one state to another would have been affected in some way.

Fifth, the Defendant did something that was a substantial step toward committing the crime of extortion [Tr. Page 131] under color of official right.

Sixth, the Defendant was not entrapped. This element applies only as to counts 1 through 8, because you'll notice when I read the entrapment instruction, I'11 tell you that instruction applies only to counts 1 through 8.

Mere preparation is not a substantial step toward the commission of the crime of extortion under color of official right. The offense of extortion under color of official right is completed at the time when the public official receives a payment in return for his agreement to perform specific official acts.

The acceptance by an elected official of a campaign contribution does not in itself constitute a violation of the Hobbs Act, even though the contributor may have business pending before the elected official and even though, shortly before or after the act of support, campaign contributions were solicited and received from the beneficiaries. However, if a public official accepts money in exchange for a specific requested exercise of official power, such a demand or acceptance does constitute a violation of the Hobbs act regardless of whether the payment is made in the form of a campaign contribution.

. . .

[Tr. Page 160]

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s _____ 12/30/96 _____
Transcriber Date

FEDERALLY CERTIFIED TRANSCRIPT
AUTHENTICATED BY:
/s/ _____
L. L. Francisco, President
Echo Reporting, Inc.

APPENDIX N

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:
	: Docket No.
vs.	: CR-05-0359
	:
DOUGLAS JEMAL, NORMAN J. JEMEL and BLAKE C. ESHERICK:	: Pages 4264 to 4354
	: Washington, D.C.
Defendants.	: Wednesday, :.
	: October 18,
	: 2006
	: 10:15 a.m.

DAY 27 - MORNING SESSION
TRANSCRIPT OF A TRIAL
BEFORE THE HONORABLE
RICARDO M. URBINA
UNITED STATES DISTRICT JUDGE

[Transcript at 4291:8-4292:3]

[Tr. Page 4291:8]

Before defining the elements of the offense of bribery, each of which the Government must prove beyond a reasonable doubt, let me first note that the indictment charges that each defendant provided the public official with numerous things of value with the corrupt intent to influence him in the performance of numerous official acts. In order to convict, you must be unanimous both as to the thing or things of value given to the public official and the official act or acts that the defendant or defendants corruptly intended to influence.

The elements of the charge of bribery are, each of which the Government must prove beyond a reasonable doubt:

1) That the defendants, on or about May 2001 to December 2002, offered, promised or gave money or something else of value to Michael Lorusso;

2) That Michael Lorusso was then a public official by virtue of his being a District of Columbia employee of the Office of Property Management;

3) That the defendants did so with corrupt intent [Tr. Page 4292] to influence an official act of Michael Lorusso, or to induce Lorusso, Mr. Lorusso, to perform acts in violation of his official duty.

. . .

[Tr. Page 4354]
CERTIFICATE OF REPORTER
I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/
ELAINE A. MERCHANT, RPR, CRR
Official Court Reporter